

RINALDO JOHNSON AND ANN E. JOHNSON—LEGAL
REPRESENTATIVES OF.

[To accompany bill S. No. 255.]

JANUARY 9, 1857.

Mr. TAYLOR, from the Committee of Claims, made the following

REPORT.

The Committee of Claims, to whom was referred Senate bill No. 255, for the relief of the legal representatives of Rinaldo Johnson and Ann E. Johnson, with the accompanying papers, have had the same under consideration, and now report:

The petitioners, for whose relief the bill in question was framed, set forth, substantially, that a large quantity of tobacco belonging to those whose representatives they are, and which was stored in certain warehouses at Magruder's Ferry, in the State of Maryland, was destroyed by the British forces during their invasion of Maryland, in the war of 1812, because those employed by the government of the United States in the military defence of the country availed themselves of the warehouse in which it was contained as a shelter from the fire of the enemy; and that in consequence of this, the government of the United States is bound to make good their loss. The claim of the petitioners, then, is one for compensation for property destroyed in war by the public enemy; and the question whether there is any principle either of public law or national policy which obliges or requires a government to make the compensation asked for, is presented for decision.

The first thing that strikes one who enters upon such an inquiry, is the fact that there is nothing to be found in the works of writers upon the public law of nations which is calculated to throw any light upon the subject, or to aid in arriving at a proper conclusion upon it. Wars have been carried on in every age of the world, and every question which can grow up between contending states, either as to the mode of carrying it on, or as to the rights and obligations to which its existence or its conduct might give rise between belligerent powers, has been again and again discussed by the most eminent statesmen and distinguished jurists with all the ability and penetration that their nature and importance demand; but so far as we have been able to discover, there has been no instance, in any age or nation, in

which there has been a reference by any writer, of greater or less authority, to the existence of such a right, on the part of the citizen, upon a state, as that involved in the petitioners' claim. And this would seem to be precisely what should have been expected from the principles of public law, as universally recognized among all civilized nations from the earliest times to the present day.

A war, whether offensive or defensive, is regarded as undertaken by the sovereign power for the common good, and all the citizens of a country are considered as parties to the war, and equally interested in it. Whenever war exists, it has been the invariable practice of states to consider the property of all the individuals of a nation as the property of the nation; and, as a necessary consequence of this, it has always been held that the existence of war gave the sovereign the right to take the persons and confiscate the property of the enemy wherever found. This may seem the doctrine of a barbarous age, and be thought in conflict with the plainest dictates of justice. But it is, nevertheless, the doctrine which has been everywhere received in modern times throughout Europe, and which has not only been recognized by our own diplomatists and statesmen, but has been repeatedly sanctioned by unanimous decisions of our Supreme Court in cases brought before them for their adjudication.

From the nature of war, it is impossible that it should be carried on between two nations without giving rise to the destruction of private property. In some of the wars of modern Europe whole provinces were laid waste with fire and sword, and multitudes of peaceful citizens were reduced to beggary by the wanton and unprovoked destruction of their property; whilst in others the populations of villages, towns, and cities were subjected to forced contributions of money or supplies by the invading forces; but history presents no instance in which the invaded states gave any indemnity to the sufferers. When the laws and usages of war are violated by a belligerent, it is an admitted principle of the law of nations that the other party to the war has a right to claim an indemnity. Such claims have sometimes been recognized by treaty; and there may have been instances in which one nation has exacted from another the value of the property of its citizens which had been destroyed in violation of the rules of legitimate warfare, and paid it over to the sufferers. When, however, no such indemnity has been obtained, no European state has ever made any compensation out of its own coffers to its citizens for the losses incurred by them in war from the destruction of their property by the enemy.

Nor is this to be wondered at. It is now the practice of all nations to capture the private property of non-combatant enemies, wherever found upon the high seas, and to condemn it as lawful prize of war in favor of the captors. In the wars of the latter part of the last century, and in the early part of this, hundreds of millions in value of the property of peaceful citizens engaged in useful traffic, and who had no connexion, immediate or remote, with the wars going on, were captured upon the ocean and converted to the enemy's use, and yet no compensation of any kind was ever made to those who were subjected to these losses by the different European powers. "To the

victor belongs the spoils," was the maxim of the ancient law of nations, and the maxim applied to captures made on the land as well as to those on the sea until very recently; and when the practice which gave rise to the maxim was abrogated in later times, first, by positive treaty stipulations between particular states, and then by so universal a consent among civilized nations that this partial abrogation became part and parcel of the public law, it did not follow, because a state denied the general right to capture private property on land, and make it prize of war, that it therefore imposed upon itself an obligation to indemnify the citizen whose property was captured and carried away or destroyed by a public enemy in violation of the acknowledged laws of war.

In absolute governments no disposition to indemnify subjects whose property had been destroyed or carried away by the enemy, whilst engaged in war, would at any time be likely to exist; nor does it seem possible that any notion that it would be proper to do so would ever originate even in republics, when they are surrounded by powerful neighbors with whom they had been before embroiled, and upon whose moderation, justice, and good faith there could be no firm reliance. If a nation has such neighbors, she is perpetually in danger of being involved in war. No wisdom or forbearance on her part can exempt her from it. It may at any time be forced on her by the lust of dominion, or even by the caprice of monarchs; and when that is the case, and the nation is obliged to take up arms in self-defence, and wage perhaps a long and expensive war, which has tasked all her resources to their very uttermost, it is inconceivable that any people, on coming out of such a contest, should attempt to impose still further burdens on themselves to repair the particular injuries which had fallen upon individuals in the course of its prosecution. A just war is always the result of necessity; and when the evils that inevitably follow in its train fall upon particular individuals, it has hitherto been the judgment of the world that, like the ordinary dispensations of providence upon mankind, they should be borne by those upon whom they have fallen.

Notwithstanding the importance of the subject, and the interest which sufferers from the ravages of war must have excited in every country that has been subjected to its horrors, we are not aware that it ever received the serious attention of the legislative department of any government until it was brought to the notice of the Congress of the United States by the sufferers in the war of 1812 upon the northern frontier soon after that war was brought to a close.

The position of the United States at that time was peculiarly favorable to the fair consideration of the whole matter, whilst the situation of the claimants themselves was such as to enlist in their behalf the warmest sympathy of all those who were required to decide upon their claims. We had but a single neighbor upon the North American continent with whom it was possible we could have a contest, and with that neighbor we had just concluded a treaty of peace under circumstances which justified the belief that there was very little likelihood that the peaceful relations then established with her would ever again be disturbed; so that there was no room for the apprehension

that if anything were paid to-day it was probable more would have to be paid to-morrow.

After the fullest discussion, the act entitled "An act to authorize the payment for property lost, captured, or destroyed by the enemy while in the military service of the United States, and for other purposes," approved on the 9th of April, 1816, was passed by Congress. This act provided for making compensation—

First.—To particular classes of persons for certain kinds of moveable property—as, for instance :

1. To volunteers or draughted militia men, whether of cavalry, mounted riflemen, or infantry, who have sustained damage by the loss of their horses "killed in battle;" or which had died "in consequence of wounds therein received;" or "in consequence of failure on the part of the United States to supply such horses with sufficient forage while in the military service of the United States;" or "in consequence of the owner being dismounted, or separated and detached from the same by order of the commanding officer, or in consequence of the rider being killed or wounded in battle ;"

2. To persons who acted in the military service of the United States as volunteers or draughted militia men, and had furnished themselves with arms and military accoutrements, and had "sustained damage by the capture or destruction of the same, without any fault or negligence of" theirs ;

3. To those who had "sustained damage by the loss, capture, or destruction by the enemy of any horse, mule, ox, wagon, cart, boat, sleigh, or harness, while such property was in the military service of the United States, either by impressment or contract, except in cases where the risk to which the property would be exposed was agreed to be incurred by the owner, if it should appear that such loss, capture, or destruction was without any fault or negligence on the part of the owner," or who had sustained damage by the death of any such horse in consequence of failure on the part of the United States to furnish the same with sufficient forage while in the service ;" And,

4. To those whose property had been impressed or taken by public authority "for the use and subsistence of the army," and had "been destroyed, lost, or consumed :"

Second.—To the owners of houses or buildings who had sustained damage by their destruction by the enemy, "while the same were occupied as places of military deposite, under the authority of an officer or agent of the United States," if it appeared "that such occupation was the cause of their destruction."

The slightest examination of this act will at once make it apparent that it was the intention of the national legislature to limit the compensation for property "captured, lost, or destroyed while in the military service of the United States :"

1st. To the arms and accoutrements required for the equipment of the volunteers and militia men, and to their horses, when they served as mounted men ; to the animals, vehicles, and other means of transportation actually employed to facilitate the movement of troops ; and to the provisions and other supplies necessary to their support. And—

2d. To such buildings as were, at the time of their destruction, actually occupied by the military forces of the United States in such a manner as to impress upon them a public character, and justify an enemy in considering them as making a part of the military defences of the country.

The act provided for the appointment of a commissioner to decide upon all cases arising under it, subject to such rules and regulations as the President should prescribe; and limited the presentation of such claims, and the authority of the commissioner to decide them, to two years from the passage of the act. The adjudications of the commissioner upon the claims submitted to him, whether in favor of, or adverse to, the claim of the applicant, were directed to be entered by his clerk in a book to be provided for the purpose; and it was declared that when the adjudication was in favor of the claimant, he should be entitled, upon the production of a copy of the adjudication duly certified by the clerk of the commissioner, "to payment of the amount thereof at the treasury of the United States."

Very soon after the passage of the act, the commissioner provided for was appointed, and entered upon the discharge of the duties imposed on him. On the 7th of September following, the Secretary of War informed the commissioner that the President had "been pleased to direct that the occupation of houses and buildings for the military force of the United States" was embraced in the ninth section of the act—the section providing for the payment of damages sustained by the destruction of houses or buildings by the enemy. This was a liberal and fair interpretation of the act. But it was not long, however, after the commissioner began the investigation of particular claims, before it was discovered that he was disposed to give a very loose and large interpretation to the act; and, in consequence, as soon as this disposition had manifested itself, his proceedings were subjected to the Executive scrutiny.

On the 21st of October he was informed, through the Secretary of War, that the act did "not embrace the case of officers of the regular army, and that the property which a regular officer may have taken with him in the service, or which he may have been required by law to keep, is not comprehended by the terms "impressed or by contract;" that the provisions as to the loss of horses or other animals only extended "to losses resulting from the acts of the enemy, or from the failure of the government to supply the necessary forage;" that the provisions of the act relating to the destruction of houses or buildings only extended "to cases of destruction of property by the enemy, which are justifiable by the laws of civilized warfare;" and that "the occupation of houses or buildings as places of military deposite or by an armed force, must be continued up to the time of the destruction;" and "that the occupation of houses or buildings by an armed force, for a night, upon a march," was not within the meaning of the act, "unless in the immediate presence of an enemy;" and that the act did "not extend to the case of consequential injury resulting from the destruction of houses or buildings;" and that no compensation could, "therefore, be allowed for the destruction of houses or buildings not occupied as a military deposite, or by a mili-

tary force." On the 1st of November he was informed, through the War Department, that the provisions of the act would "not justify the payment of claims for partial injuries to oxen or horses," and was requested to suspend all decisions relating to claims for the destruction of houses or buildings. And on the 6th of December, immediately after the meeting of Congress, the President, by message, informed the two houses that the portion of the act (the ninth section) relating to the destruction of houses or buildings "by the enemy, while the same were occupied as a military deposite under the authority of an officer or agent of the United States," having received a construction "giving it a scope of great and uncertain extent," he had thought proper that proceedings relative to claims under that part of the act should be suspended "until Congress should have an opportunity of defining more precisely the cases contemplated by them." The President then recommended the subject to their consideration, and observed that "they would have an opportunity, at the same time, of considering how far other provisions of the act" might be rendered "more clear and precise in their import."

The House of Representatives, on the day the message was sent to them, adopted a resolution calling for all the proceedings of the commissioner. These proceedings were transmitted to the House, by the President, on the 21st day of December, after he had instructed the commissioner to make no final decisions upon any of the claims before him, or that might be exhibited under the act, but to limit his action to preparing and arranging all such cases for decision when it should be deemed proper. Congress then proceeded to consider the whole subject, and the act entitled "An act to amend the act 'authorizing the payment for property lost, captured, or destroyed by the enemy, while in the military service of the United States, and for other purposes,' passed the ninth of April, one thousand eight hundred and sixteen," approved March 3, 1817, was the result of their deliberations.

This act declared that the ninth section of the act of 1816 should be construed "to extend only to houses or other buildings occupied by an order of an officer or agent of the United States, as a place of deposite for military or naval stores, or as barracks for the military forces of the United States," and thus not only excluded all consequential damages resulting from the destruction of a house or building, within the true intent and meaning of the act—such as that growing out of the loss of movable property contained in it at the time of the destruction, or of the loss of other buildings not occupied by authority of the United States, fired at the same time by the enemy—but had the effect of restraining the act to the single case of the occupation of houses or buildings by the military force of the United States "as barracks," in opposition to the broader construction of the act given by the President on the 7th of September, 1816, through the War Department. But this was not all. To prevent any undue extension of the provisions of the original and of the amendatory act, the power of deciding in the last resort was entirely taken away from the commissioner by the fifth section of the act, which provided that all claims allowed by the commissioner should be reviewed by the Secretary of War.

The claims presented to the commissioner under these acts had not all been acted on when his authority was terminated by the limitation of time contained in the act of 1816; and by an act of Congress approved on the 20th of April, 1818, all the claims then remaining in the office of the commissioner, and not acted on finally by him "before the 9th of April, 1818," were transferred to the office of the Third Auditor of the Treasury Department, and the Auditor authorized to adjudicate upon them, subject to the same "rules, regulations, and restrictions" as had been before prescribed to the commissioner.

The action of the Third Auditor did not, it seems, give satisfaction to the numerous claimants under the acts in question. They continued to direct the attention of Congress to the subject, until at last a select committee was raised in the House of Representatives, with instructions to inquire what further legislative provisions were "fit and necessary to carry into effect the provisions of the act of Congress passed March 3, 1817, entitled "An act to amend the act authorizing the payment for property lost, captured, or destroyed by the enemy while in the military service of the United States, and for other purposes, approved April 9, 1816." This committee made their report to the House on the 5th of April, 1824. The report was elaborate and eloquent. It displayed in the warmest language the merits of the sufferers upon our northern frontiers, on the borders of the Chesapeake and in Louisiana, and awakened in the highest degree the sympathies of members by picturing in the liveliest colors the scenes of horror and dismay which everywhere attend upon the footsteps of war; and by holding up for their contemplation the distress and wretchedness of the claimants, who in some instances were men, it was said, who had been bereft of their last worldly effects by the ravages of the enemy—and in others were widows and orphans of those who had fallen victims of this cruel invasion, and who had been left actually without a shelter for their heads, and without the means of subsistence.

This committee asserted that it was the duty of every government, and, of course, perfectly equitable, and even strictly just, to relieve, as far as possible, those who had been injured or ruined by the stroke of the public enemy; and that it was peculiarly incumbent upon a republic like ours—the principle and base of whose political existence was that the burdens and benefits of its operations should be equally borne or enjoyed—to adopt a policy on this subject which would have the effect of apportioning the losses incident to war among all the members of the community. And this, they intimated, was the intention of Congress in its previous legislation. It was said to have been well known, before and at the time of passing the law referred to, that the inhabitants of the Niagara frontier, in the State of New York, and others residing on the margin of the Chesapeake, who had suffered ruinous losses in the destruction of their property by the enemy, were urging their claims for an indemnification upon Congress; and that but little doubt existed with the committee that Congress contemplated by the law to extend relief to those unfortunate sufferers; that whatever doubt has since been created of the design of Congress in this respect, none was at that time entertained by the claimants;

that as soon as effect was given to the law, by the appointment of a commissioner, almost every claim of this nature was immediately presented to him for adjudication; that the commissioner, whose local situation qualified him to judge of the object of the law, after a faithful and laborious investigation of the cases arising from the destruction of the enemy, decided that they were generally embraced within its provisions; but that, while the commissioner was proceeding, in pursuance of this opinion, to examine and adjudge upon the individual claims, and after the allowance and payment of some of them, his progress was unexpectedly arrested by an order of the President of the United States to suspend further adjudications upon them.

The whole subject then came up for consideration before Congress, supported by an able report in favor of the pretensions of those of the claimants who believed that compensation ought to be made to the owners of all of the property destroyed by the enemy in the war of 1812. Congress, however, did not approve the views of the committee. The whole matter was repeatedly brought up in the House, and after undergoing discussion in a debate distinguished for the ability and statesmanship displayed in it by many eminent persons who still live in the memories of the American people, and which was continued through eight whole days, (in December, 1824, and January, 1825,) the act entitled "An act further to amend the act authorizing payment for property lost, captured, or destroyed by the enemy while in the military service of the United States, and for other purposes," was passed by both houses, and was approved and became a law on the 3d of March, 1825.

This act (4 Statutes at Large, 123) provided that any person having a claim for a building destroyed by the enemy, under the 9th section of the act of 1816, and of the act of 1817 amending it, which had been presented to the commissioner appointed under the act of 1816, "at any time before the 10th day of April, 1818, and which was not paid under said acts, nor finally rejected" by the commissioner, might, within nine months, present it to the Third Auditor of the Treasury for examination and adjustment; and then authorize the Auditor "to assess the damages and certify the amount for payment" only if the building, for which damages were claimed, had been "at the time of its destruction occupied, by order of any agent or officer of the United States, as a place of deposit for military or naval stores, or as barracks for the military forces of the United States." And thus it is seen that the Congress of the United States has, at only three periods when the subject has been brought before it and considered as a great public question, determined that it would make no compensation to individuals for the property of which they have been deprived by the violence of war, unless for those claims of moveables which are essential to the equipment of the soldier, or were indispensable to the movement of troops or for their support, and which were lost, captured, or destroyed whilst actually in the military service of the United States; and for houses or other buildings which had been taken possession of and occupied for military purposes by the authority of the United States, and which were thus occupied at the very time they were destroyed.

And this determination, in the view of your committee, was right, both in what it awarded and in what it refused.

The government of the United States is, by the Constitution, invested with the power to declare and carry on or wage war, and, as an incident to that power, it has the undoubted right to take the property of its citizens which may at any time be discovered to be indispensable to the success of its military operations, wherever it is found. All such property, however, is taken for the public use. The owner is deprived of it, if it be consumed or destroyed before this use ceases, by the act of the government; and in such an event, under the public law of nations, the obligation of the government to indemnify the citizen or subject has always been regarded as complete. With us, however, the citizen is not left dependent upon the principle of the public law of nations. The obligation is recognized in the fundamental law of the nation, and the government is bound to pay its value to the owner under that clause in article 5 of the amendments to the Constitution, which declares that private property shall not be "taken for public use without just compensation." This is the principle of the acts of 1816, 1817, and 1825, relating to this subject. Buildings destroyed by the enemy while actually occupied for military purposes by authority of the United States, and the arms and accoutrements of the volunteers and militiamen; the animals and vehicles, and other means of transportation employed in facilitating the movements of troops; and the provisions and other supplies impressed for the use of the army, are all embraced in it.

But it is otherwise with all other property, whether it consists of houses or other buildings, not actually occupied by the public authority for military purposes, or of moveables, such as household furniture, gathered crops, or merchandise, even if these were contained in buildings actually occupied for military purposes by authority of the United States at the time of their destruction, and were destroyed in them. We know it has been said by some that they were unable to recognize the force or propriety of the distinction which makes the government liable for real property destroyed by the enemy, and exempts it from liability for the moveable property destroyed in it—which makes it pay for a house burned by the enemy, and refuses to pay for the personal property burned in the house. Your committee have no such difficulty.

The distinction is obvious and necessary. A house cannot be carried off at will. Personal property, on the other hand, under the control of the owner, is susceptible of removal. It is in his power to carry it where he pleases; and when the district of country where it exists becomes exposed to the incursions of an enemy, or the spot where it is deposited is occupied by a military force, or for military purposes, and therefore is liable to become the scene of combat, it is not only his right, but it is his duty, to remove it from the place of danger. When a nation is engaged in war, it is universally conceded that every citizen is required to do all in his power to injure the public enemy. But it is just as true that it is also required of him to do all in his power to prevent injury being done to his own country. The loss of the property of its citizens is an injury done to the coun-

try. If one has it in his power to rescue the property of his fellow citizen from impending destruction and fails to do so, he violates a great duty which he owes to his country. If his own property is exposed to peril from the operations of war, and he fails to employ the means at his disposal to remove it beyond the reach of danger, he not only violates a great public duty which he owes to the whole country, but he violates a duty he owes to himself; and if it is destroyed in the exposed situation where he left it, it is the result of his own want of proper care and exertion, and he can have no right to be indemnified against the consequences of his own negligence.

In the opinion of your committee, there is not only no principle of law or equity which requires that payment should be made to the sufferers for such losses, but it seems to them that their payment is forbidden by the best interests of the country, and the dictates of a wise policy.

Peace is essential to the progress and prosperity of nations. During its continuance their material resources are developed. The intercourse between them growing out of the necessities of trade, the appetite for foreign travel, and the desire to find new scenes for observation and new opportunities for intellectual improvement, favors the diffusion of knowledge, advancement in all the useful arts of life, and the spread of those inventions which have done so much to augment the productions of the earth or of labor, which contribute to the sustenance or comfort of mankind. In the present age of the world wars, even on the part of monarchical governments, can scarcely be engaged in unless favored by popular sentiment; and hence sound policy requires that no measure should ever be adopted by any nation which would be likely to promote the growth of such a sentiment.

If this rule be an important one for monarchies, how much more important must it be in a government like ours, in which war is the result of the popular will alone. Nothing disposes communities to peace so much as the apprehension of loss by war. If it is the settled principle of a people that no compensation whatever shall be made to those who suffer from its ravages, there will be no war, when that question depends upon the will of the people, as long as it can be avoided with honor. The influence of this apprehension is universal; and yet its strength and effects are not always visible to the common observer. The history of the world in our day, however, when regarded with a view to those objects, will make it sufficiently apparent. The causes for a war between some of the great maritime powers have, at different times within the last twenty years, been far greater than those which recently embroiled Russia with England and France; and yet there was no war. And why was this? Millions of property, if there had been war between them, would have been exposed to capture on the ocean; and for such captures no one has ever even pretended that the owners could have any claim for compensation. The great and immediate evils of war would, as a matter of course, in a maritime country, have fallen upon commerce. And, therefore, whenever there was the slightest reason to believe that the peaceful relations of these nations were about to be endan-

gered, the commercial classes took the alarm. These classes exist in all civilized communities, and wherever there is the most wealth, and men are accumulated in the greatest masses, there they are the most powerful. Their voices are not only listened to with respect by those who are dependent on them, or are engaged as their co-workers in the multifarious operations of trade, but they are loud and potential enough to penetrate the council chambers of princes, and command their attention and obedience.

But this is not all. An adherence to the rule spoken of is beneficial in its tendencies during the existence of war itself. The great object of belligerents is to weaken and overcome their enemy; and as in modern times money is the sinew of war, if it were the practice of a government to pay to its citizens the value of their property destroyed by an invading force, it would at once become the interest of the enemy to penetrate the country at every assailable point, and to lay it waste with fire and sword. Every act of dastardly and secret rapine, and of wanton and barbarous destruction of private property, would tend as much to the exhaustion of the resources of the State as the bold and open blows struck in honorable warfare at the men embodied and in military array to fight her battles. War would, under such a state of things, soon lose everything of a noble and lofty character: ruffians, pilferers, and thieves would be its fit instruments, and it would become a game of wanton outrage and of barbarous violence and destruction.

If this be certain, and a refusal to pay for property destroyed by the enemy is calculated to diminish the evils of a foreign invasion, it is also certain that such a refusal will have a direct tendency to promote the making of a vigorous defence against it. If every citizen knows that he has nothing to hope for from the State by way of indemnity for losses inflicted on him by the public enemy, and that when the country is invaded he must look to the repulse of the invading force or to its forbearance for the safety of his property, there can be no doubt as to the result. The private interest of the citizen will coincide with his public duty. He would fight, if need be, with the invading enemy in defence of the country; and as every blow he struck would be for the protection of his own property also, the country would be assured that he would do in her cause all that he had the courage and capacity to do for himself.

There is nothing in the circumstances of this case which entitles the claim made by the petitioners to any peculiar favor. The country on the borders of the Chesapeake had been the seat of war for more than a year before the destruction of the tobacco in question. The inhabitants along the bay and upon all the rivers falling into it were aware that the enemy had been for a long while engaged in making predatory incursions into the more exposed neighborhoods for the purpose of destroying the property of the population, and that a great deal of valuable property of different kinds belonging to individuals had been already burned or carried off. It was generally believed that private property within reach of the enemy was everywhere in danger. Tobacco, especially, from its value, was thought to be exposed to capture; and such, indeed, was the apprehension en-

tertained for its safety in the portion of country where this tobacco was destroyed, that a deputation was sent to the then governor of Maryland to inform him of the importance of extending protection to that part of the country, because of the quantity of tobacco belonging to the planters which was there exposed to the enemy. The public opinion then was that private property in that section of country would be subject to capture wherever found, unless protected by a sufficient force. In consequence of this, and at the urgent solicitation of a portion of the people, extraordinary means were employed by the government to extend protection to the exposed property; and because those means were not successful, and the property was destroyed in spite of the efforts made to defend it, it is gravely pretended that the government is responsible for the value of the property destroyed, because the presence of the forces employed to protect it was the sole cause of its destruction!

Your committee believe that it is not pretended that the warehouse at Magruder's Ferry, in which the tobacco for which the claim is made was contained, was, at the time of its destruction, occupied as a place of deposit for military or naval stores, or as barracks for the military forces of the United States. One of the witnesses, (James Baden,) whose deposition is submitted in support of the claim, says: "That on the 17th of June, 1814, the warehouse in Prince George's, called Magruder's warehouse, *having been occupied a short time previous* by the American forces, was burnt." Another witness, (G. W. Biscoe,) says that a company of militia, acting under his orders as major of the 17th regiment of Maryland militia, "was posted at Magruder's warehouse *for its protection and defence*, and when the British barges ascended the river on or about the 17th of June, 1814, so soon as they were discovered by Captain Joshua Nailor (the captain in command) to be in reach of his fire, he commenced firing upon them from behind the said warehouses, and continued to do so until his ammunition was expended—the enemy immediately landed, and the militia retreated. The enemy then burned the warehouses, with all the tobacco contained therein." James Baden, (the same witness just before referred to,) in another deposition, makes the same statement, in substance, as Mr. Biscoe as to the burning of the warehouses at Magruder's Ferry, and then says: "This was on the 17th of June, 1814, on which day we prevented them (the British) from coming to Nottingham, which probably prevented that warehouse from sharing the same fate."

From these statements it is perfectly clear that the presence of the military forces had nothing to do in exciting the enemy to destroy the warehouses in question with the property contained in them. The public expectation was that they would be attacked and destroyed. It was not the design or purpose of the government to make that point a military position with a view to the defence of the country, but the forces there at that time were posted there simply to defend the property from the expected attack. It is true there is a witness (Jesse Selby) who states that he "verily believes the warehouses were burned in consequence of said company (the company of militia) being there, and the said warehouses affording protection and being occupied

by them." This might have been the conviction of the witness, but certainly it is not one that can be shared in by any person of ordinary intelligence, who reads the history of that day and remembers the buccaneering and predatory character of the enemy upon every coast and every frontier.

The historian of Maryland (and we use his very words) says: "Admiral Cockburn appeared in the Chesapeake in March, 1813, with four ships-of-the-line and five frigates, and immediately began a series of disgraceful outrages against the property and persons of the unarmed citizens. Even the women and children did not escape the cruelty of these monsters. Frenchtown, Havre de Grace, Fredericktown, on the Eastern Shore, and Georgetown were burned." "Wherever a body of militia was collected, the chivalrous Cockburn held aloof." And again, after mentioning that Cockburn threatened Annapolis and Baltimore, but did not attack them because they were prepared for a vigorous defence, he says: "He," Cockburn, "preferred a more safe and profitable though more inglorious warfare; and private residences and the smaller bay craft were plundered and consumed. So extensive was the destruction that at night the shores and waters of the bay were lit up by the continuous conflagration." All property, of whatever kind, was in danger at any point within the enemy's reach; and not only is it clear that the property in question would have been destroyed if there had been no military force to attempt its defence, but it is more than probable that the presence and efforts of the militia, on that very day, prevented the destruction of other warehouses at Nottingham, which the enemy were then prevented from reaching.

Under the circumstances existing at the time of the destruction of the tobacco, which is the subject of the claim made by petitioners, it was the undoubted duty of the owners of every species of valuable property to remove it beyond the reach of the marauding enemy. Any one who failed to remove it would seem to have neglected to do that for the preservation of his property which ordinary prudence required of every one. But when, as in the present instance, there was not only a failure to remove property, but the owners of it accumulated it in warehouses at points accessible by water, in such quantities as to excite the cupidity of plunderers, or to facilitate the work of those who aimed at its destruction, it cannot be doubted that its loss must be chiefly attributable to their own misconduct.

From all this it is the belief of your committee that there is no foundation whatever for the claim of petitioners, unless upon the broad ground that a State is bound to make compensation to its citizens for all the losses which may be sustained by them in war; but, if that principle is to be recognized, why legislate for one case, or even for one class of persons? If any loss is to be paid, all losses ought to be paid. There are millions upon millions of losses that were incurred by others of our citizens during that war that were as ruinous and hard to be borne as those of the claimants, or of the class to which they belong. What class, what individual is there that does not suffer from the effects of war? To use the language of one of the eminent persons who took part in the debate on this subject in 1824,

to which we have already referred, this principle "runs out into consequences beyond our utmost sight." "Consider what may not be said to be either the direct or indirect consequences of war. The scholar is driven by it from his books and flies to arms; the husbandman leaves his plough in the furrow; all classes of the community are thrown into a state of greater or less derangement. All these are the effects of war, and the act of government is its immediate cause. An embargo, for instance, is laid; the merchant's obligations come upon him while his capital lies unemployed and his ships are rotting at the wharves. The farmer loses his foreign market, and his crops are rotting in his barn; the injury is everywhere. You can never indemnify all who suffer, and why must one small class be preferred before all their brethren in calamity?" And what would be the result of the recognition of such a principle? Would not the apprehension of the pecuniary burdens which would inevitably be thrown upon a nation by war impel it to submit to injustice and indignity rather than to provoke a contest by resisting them? And if, at last, it should be driven into war, would it not, in all probability, be subjected to its greatest horrors, as its known policy would tempt the enemy to burn and waste the property of its citizens, with a view to exhaust its resources and destroy its strength?

Claims of this character were pressed upon Congress at a time when the echoes awakened by the enemy's cannon had scarcely ceased their reverberations along the shores and among the hills of every frontier of our widely extended country. Congress took them into consideration at a time when the very atmosphere it breathed was scarcely freed from the smoke which had ascended from the burning property of the sufferers; the sad survivors of many a scene of blood and rapine, caused by the excesses of a lawless and inhuman enemy, were before it, and the destitution and wretchedness with which they had been overwhelmed appealed to all eyes; and Congress itself, when deciding upon the claims, sat within sight of blackened ruins that bore mute but eloquent testimony to the terrible devastations of war; and yet the claims were rejected. And why was this? Were not those who preceded us in these halls men possessed of the ordinary sympathies of our nature? Had they not sensibilities to be awakened by the distresses of their fellow-citizens, and hearts that prompted them to give them all the relief rightfully in their power? Beyond all doubt they had; and the claims were rejected, not because they did not feel for the sufferers, but because they believed that the public good requires that no relief should be given unless in those cases where the suffering has been directly occasioned by the act of the government, in using private property for military purposes.

Whenever the question involved in such claims has attracted the public attention, and it has been decided as one connected with the public policy of the country, the decision of the first Congress has always been affirmed. That it has its foundation in reason and sound policy your committee do not doubt; and they have no hesitation in saying that, in their view, it would be unjust to the great mass of the sufferers in the war of 1812, to whom relief has been three times refused by Congress, after full consideration, to pass acts for the relief

of particular claimants, who, owing to their situation in the neighborhood of the seat of government, may sometimes, in an unguarded moment, obtain from Congress, by importunity, what it has again and again seen fit to deny to their brethren in misfortune from a sense of justice.

The historian of the Decline and Fall of the Roman Empire, in referring to the fact of the unbelief of the Jews, the cotemporaries of Moses and Joshua, who "had beheld with careless indifference the most amazing miracles," whilst the faith of their remote descendants "had become strong in proportion as the favor and protection of Heaven was withdrawn," observes that "that singular people, in contradiction to all the known principles of the human mind, seems to have yielded a stronger and more ready assent to the traditions of their remote ancestors than to the evidence of their own senses." And now your committee feel tempted, under the circumstances of this case, to inquire, if claims of the kind under consideration are recognized and paid upon representations and proofs such as those now before us, forty years after they had been presented and refused, whether it cannot with quite as much propriety be said that the charity of the American people, through their representatives in Congress, is more easily excited by the vague fancies growing out of the frequent repetitions of the almost forgotten tales of past calamity than by the actual presence of real suffering?

In conclusion, your committee beg leave to say: that they believe it to be the settled policy of the government of the United States to make no compensation to its citizens for property captured or destroyed in war by the enemy, unless the property captured or destroyed was in the military service of the country; that the compensation made at any time shall be limited, 1st, to such buildings as were at the time of their destruction actually occupied by the military forces of the United States in such a manner as to impress upon them a public character, and justify an enemy in considering them as making a part of the military defences of the country; and 2d, to the arms and accoutrements required for the equipment of the volunteers and militia men, and to their horses when they served as mounted men; to the animals, vehicles and other means of transportation actually employed to facilitate the movement of troops, and to the provisions and other supplies necessary to their support; and that no moveable property of any other kind whatever shall be paid for, even if destroyed in buildings for which compensation would be made; that, in their opinion, this policy is wise in itself, and ought not to be departed from in the slightest degree; and that, for the reasons assigned, they now most respectfully submit a recommendation that the bill referred to them do not pass.

IN THE SENATE OF THE UNITED STATES, *May 2, 1856.*

Mr. WADE made the following report.

[To accompany bill S. 278.]

The Committee of Claims, to whom were referred the petition of the widow of Rinaldo Johnson, and the petition of Hodges and Lansdale, providing indemnity for tobacco destroyed by the British, in 1814, have given the subject a thorough investigation, and now report :

That Commodore Barney, in 1814, commanded the United States flotilla designed by the American government to protect the Chesapeake bay and its tributaries from the naval force of the enemy ; that to prevent the capture of the vessels under his command, he was compelled to abandon the Chesapeake, and was induced to sail up the Patuxent river, one of its tributaries, with the hope that the British would be unable, or at least unwilling, to follow with their larger vessels. This expectation of the commodore was not realized ; he was pursued by the enemy, and was ultimately compelled to blow up his vessels to prevent their capture.

It is well known to the Senate that from this period the Patuxent river was permanently occupied by the naval forces of the enemy, and became the point from which various military expeditions were ordered against the surrounding country, terminating with the capture of Washington and the burning of the Capitol. General Winder was placed in command of this military division ; the militia was called out to resist the landing of the British forces, and for a considerable period were successful in several instances in preventing the landing and in all instances in driving the enemy back to their vessels.

It appears, from the evidence, that two public warehouses had been erected many years before this period upon the margin of the Patuxent, for the inspection and deposit of the tobacco grown by the citizens of Prince George's county—one at the village of Nottingham, the other at Magruder's Ferry ; that these houses were in 1814 filled with hogsheads of tobacco, the property of the planters of that county, or of merchants who had purchased it for shipment ; and that the tobacco for which remuneration is now claimed by the petitioner, R. Johnson, had been deposited in the warehouse at Magruder's Ferry, and that the tobacco for which payment is asked by Hodges and Lansdale was deposited in the warehouse at Nottingham. The evidence conclusively establishes the fact that the warehouse at Magruder's Ferry was burned by the British, with all the tobacco it contained, and that all the tobacco in the warehouse at Nottingham was either taken away or burned by the enemy.

In investigating the right of the petitioners to indemnity from the federal government, your committee at once perceive that the petitioners could never have claimed indemnity under the general laws of 1816 and 1817, because the relief designed to be afforded by those acts *expressly and exclusively* applied to injuries to *real property*. The act of 1816 provides "that any person who, in the time aforesaid, has

sustained damages by the destruction of his or her *house* or *building* by the enemy, while the same was occupied as a military deposite under the authority of an officer or agent of the United States, shall be allowed and paid the amount of such damage, provided it shall appear that such occupation was the cause of its destruction."

Your committee have been unable to recognise the force or propriety of the distinction which makes the United States liable for *real property* destroyed by the enemy, and which exempts the government from liability for *personal property* destroyed under the same circumstances; they are unable to appreciate the justice of a rule which makes the government liable for a house burned by the enemy, and exempts it from liability for the personal property burned in the house.

Your committee are of opinion that the United States should be held liable to reimburse her citizens, whenever private property has been (in accordance with the usages of civilized warfare) destroyed by a public enemy, *because of its use* for military purposes by the authority of an officer or agent of the government.

Your committee believe that the facts, to which they will now very briefly advert, fully establish the right of the petitioners to relief, under the principle here laid down.

First. In reference to the warehouse at Magruder's Ferry, it appears that a considerable American force was stationed behind this warehouse, which being filled with tobacco, afforded complete protection against the cannon of the enemy, and that a battle was fought with the British vessels, which continued until the ammunition of our troops was exhausted, and they were consequently obliged to retreat. It is clearly proven that upon the retreat of the American force, the British landed and burned the warehouse, with the tobacco of the petitioner, R. Johnson, and others therein contained. In regard to the tobacco destroyed at the Nottingham warehouse, it appears that this warehouse was for a considerable time the depository of the military stores intended for the use of the militia employed in the defence of this exposed section of Maryland, and that upon one occasion the tobacco was rolled, by the directions of the officer in command, from this house, with which a breastwork was formed, from behind which the enemy were fought and repulsed. It also appears that when the enemy subsequently landed and proceeded to Washington, they destroyed or took away all the tobacco deposited in this warehouse which belonged to the petitioners, Hodges & Lansdale, and others.

Your committee further report that no possible doubt can exist as to the quantity of the tobacco which belonged to the petitioners, because it is evidenced by tobacco notes now in their possession, or deposited in the State Department, which designate each hogshead and the net weight of its contents. There are many precedents, to which your committee do not deem it necessary to refer, where the government have paid for personal property destroyed under similar circumstances. The value of the tobacco is also established by satisfactory proof, but the committee have deemed it better, in the bill which they have prepared for the relief of the petitioners, to provide that the proper accounting officers of the treasury shall ascertain, from such

proof as may be laid before them, the quantity and value of the tobacco destroyed, and shall pay the value so to be ascertained.

There being no distinction in principle in the right of the petitioners to relief, the committee have reported a bill for their joint relief, which they confidently recommend to the favorable consideration of the Senate.

IN THE SENATE OF THE UNITED STATES—*April 18, 1856,*

Mr. WADE made the following report.

[To accompany bill S. 255.]

The Committee of Claims, to whom was referred the petition of the administrator of Rinaldo Johnson and of Ann E. Johnson, have had the same under consideration, and now report :

The petition seeks to obtain indemnity for a quantity of tobacco said to have been taken and destroyed by the British during their invasion of Maryland, in the year 1814. The facts and principles involved in the several cases being identical, it was deemed proper to consider them together. These and similar claims have been frequently urged upon the attention of Congress, and numerous reports have been made, in both houses, in which the principles, both of law and equity, involved in them, have been elaborately discussed.

During the last Congress, a bill was reported and passed the Senate, for the payment of the claims of these petitioners. The report accompanying the bill contains the following statement of the case, which is adopted as a part of this report :

Commodore Barney, in 1814, commanded the United States flotilla designed by the American government to protect the Chesapeake bay and its tributaries from the naval force of the enemy ; that to prevent the capture of the vessels under his command, he was compelled to abandon the Chesapeake, and was induced to sail up the Patuxent river, one of its tributaries, with the hope that the British would be unable, or at least unwilling, to follow with their larger vessels. This expectation of the commodore was not realized ; he was pursued by the enemy, and was ultimately compelled to blow up his vessels to prevent their capture.

It is well known to the Senate, that from this period the Patuxent river was permanently occupied by the naval forces of the enemy, and became the point from which various military expeditions were ordered against the surrounding country, terminating with the capture of Washington, and the burning of the Capitol. General Winder was placed in command of this military division ; the militia was called out to resist the landing of the British forces, and for a considerable period were successful in several instances in preventing the landing, and in all instances in driving the enemy back to their vessels.

It appears, from the evidence, that two public warehouses had been

erected, many years before this period, upon the margin of the Patuxent, for the inspection and deposit of the tobacco grown by the citizens of Prince George's county—one at the village of Nottingham, the other at Magruder's Ferry; that these houses were in 1814 filled with hogsheads of tobacco, the property of the planters of that county, or of merchants who had purchased it for shipment; and that the tobacco for which remuneration is now claimed by the petitioner, R. Johnson, had been deposited in the warehouse at Magruder's Ferry. The evidence conclusively establishes the fact that the warehouse at Magruder's Ferry was burned by the British, with all the tobacco it contained.

In investigating the right of the petitioners to indemnity from the federal government, your committee at once perceive that the petitioners could never have claimed indemnity under the general laws of 1816 and 1817, because the relief designed to be afforded by those acts *expressly and exclusively* applied to injuries to *real property*. The act of 1816 provides "that any person who, in the time aforesaid, has sustained damages by the destruction of his or her *house or building* by the enemy, while the same was occupied as a military deposite under the authority of an officer or agent of the United States, shall be allowed and paid the amount of such damage, provided it shall appear that such occupation was the cause of its destruction."

Your committee have been unable to recognise the force or propriety of the distinction which makes the United States liable for *real property* destroyed by the enemy, and which exempts the government from liability for *personal property* destroyed under the same circumstances; they are unable to appreciate the justice of a rule which makes the government liable for a house burned by the enemy, and exempts it from liability for the personal property burned in the house.

Your committee are of opinion that the United States should be held liable to reimburse her citizens, whenever private property has been (in accordance with the usages of civilized warfare) destroyed by a public enemy *because of its use* for military purposes by the authority of an officer or agent of the government.

Your committee believe that the facts, to which they will now very briefly advert, fully establish the right of the petitioners to relief, under the principle here laid down.

First. In reference to the warehouse at Magruder's Ferry, it appears that a considerable American force was stationed behind this warehouse, which, being filled with tobacco, afforded complete protection against the cannon of the enemy, and that a battle was fought with the British vessels, which continued until the ammunition of our troops was exhausted, and they were consequently obliged to retreat. It is clearly proven that upon the retreat of the American force, the British landed and burned the warehouse, with the tobacco of the petitioner, R. Johnson, and others therein contained.

Your committee further report that no possible doubt can exist as to the quantity of the tobacco which belonged to the petitioners, because it is evidenced by tobacco notes now in their possession, or deposited in the State Department, which designate each hogshead and the net weight of its contents. There are many precedents, to which your committee do not deem it necessary to refer, where the government

have paid for personal property destroyed under similar circumstances. The value of the tobacco is also established by satisfactory proof, but the committee have deemed it better, in the bill which they have prepared for the relief of the petitioners, to provide that the proper accounting officers of the treasury shall ascertain, from such proof as may be laid before them, the quantity and value of the tobacco destroyed, and shall pay the value so to be ascertained.

There being no distinction in principle in the right of the petitioner to relief, the committee have reported a bill for his relief, which they confidently recommend to the favorable consideration of the Senate.

IN THE SENATE OF THE UNITED STATES—*May 2, 1856.*

Mr. Wade, from the Committee of Claims, submitted a report, (No. 151,) accompanied by the following bill; which was read and passed to a second reading :

A BILL for the relief of William G. Ridgely.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the proper accounting officers of the treasury shall audit the claim of William G. Ridgely, for tobacco destroyed by the British in eighteen hundred and fourteen, at the warehouses at Nottingham and Magruder's Ferry, in Prince George's county, and at Benedict's, in Charles county, Maryland, and from such proof as may be exhibited to them, within six months after the passage of this act, ascertain the quantity and value of his tobacco so destroyed; and that the amount so ascertained shall be paid, out of any money in the treasury not otherwise appropriated, to the said William G. Ridgely.

IN THE SENATE OF THE UNITED STATES—*April 18, 1856.*

Mr. Wade, from the Committee of Claims, submitted a report, (No. 137,) accompanied by the following bill; which was read and passed to a second reading :

A BILL for the relief of the legal representatives of Rinaldo Johnson and of Ann E. Johnson, deceased.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the proper accounting officers of the treasury shall audit the claims of the legal representatives of Rinaldo Johnson and of Ann E. Johnson, for tobacco destroyed by the British in eighteen hundred and fourteen, at the warehouse at Magruder's Ferry, in Prince George's county, Maryland, and from such competent proof as may be exhibited to them, within six months after the passage of this act, ascertain the

quantity and value of their tobacco so destroyed; and that the amount so ascertained shall be paid, out of any money in the treasury not otherwise appropriated, to the legal representatives of Rinaldo Johnson and of Ann E. Johnson, deceased.

STATE OF MARYLAND, *Prince George's county, to wit:*

Personally appeared James Baden, of the county aforesaid, before the subscriber, one of the State of Maryland's justices of the peace for Prince George's county aforesaid, and being sworn on the Holy Evangelical of Almighty God, depose and saith: That he was a qualified inspector of tobacco for Magruder's warehouse, in Prince George's county aforesaid, on the Patuxent river, for the years 1813, 1814, and 1815; and in March, 1813, when he took possession of said warehouse, Rinaldo Johnson, senior, a large planter in Prince George's county, had stored in said warehouse sixty-eight hogsheads of tobacco, all of which belonged to said Rinaldo Johnson, senior. This deponent is enabled to speak positively of the number of hogsheads from an examination of a paper now in his possession, and a copy of which is herewith filed, marked A, which shows the condition of the warehouse and the amount of tobacco stored in said warehouse, and *to whom the tobacco belonged*. This deponent further states, that each hogshead averaged at least one thousand pounds; that the tobacco thus stored by the said Johnson was destroyed when the warehouses at Magruder's were burned by the naval forces of Great Britain in June, 1814. This deponent further states, that the inspection books of said warehouse were burned when the British destroyed the aforesaid warehouses, which had been used by the militia as a work of defence and fortification, they being the only houses located on the shore of the river, and which furnished an entrenchment behind which our troops obtained protection; and in consequence of their use and occupation by troops as a military post or depot, I believe, may be ascribed its destruction by the enemy, for as soon as the troops were forced to retreat from the warehouses, in consequence of superior numbers and ordnance of the enemy, they carried and conflagrated said warehouses and their contents. This deponent further states, that the warehouses as aforesaid were occupied by our troops from the extreme necessity of the case; at this assailable point there were no other means to which our troops could resort for protection or occupation, but the said warehouses. These were the only defences then available, and hence the necessity of occupation, and planting our artillery in such a manner so as to render it effective, and to cover our troops from the fire of the enemy. Captain Naylor, who commanded the company, died several years ago, as well as other officers.

Sworn before me, this 13th day of April, in the year 1850.

CLEMENT R. CONNECH,

Justice of the Peace in and for Prince George's county, Md.

For the character and standing of Mr. Baden, who made the foregoing affidavit, I beg to refer to the Hon. Mr. Pratt, Senator from the State of Maryland.

M. C. YOUNG,
Attorney for Claimants.

APRIL, 1850.

Extract of tobacco stored by Rinaldo Johnson, senior, late of Prince George's county, Maryland, in the warehouses at Magruder's, in said county, and which was burned by the British during the war of 1812.

Mark.	No.	Gross.	Tare.	Net wt.	Mark.	No.	Gross.	Tare.	Net wt.
R. F. -----	6	862	96	766	R. F. -----	175	1,006	110	896
Do -----	11	806	106	700	Do -----	177	985	109	876
Do -----	2	942	102	840	Do -----	178	1,190	104	1,086
Do -----	3	837	100	737	Do -----	179	1,025	102	923
Do -----	8	906	103	803	Do -----	277	1,225	100	1,125
Do -----	10	968	106	862	Do -----	278	1,275	102	1,173
Do -----	12	844	107	737	Do -----	279	1,280	106	1,174
Do -----	172	1,087	102	985	Do -----	280	1,208	104	1,104
Do -----	173	1,243	98	1,145	Do -----	286	994	98	896
Do -----	174	1,156	104	1,052	Do -----	176	1,231	104	1,127
Do -----	175	1,225	106	1,159	Do -----	50	1,069	108	961
Do -----	176	1,256	106	1,150	Do -----	51	1,140	92	1,048
Do -----	177	1,188	102	1,086	Do -----	52	1,058	108	950
Do -----	83	1,150	106	1,044	Do -----	53	1,092	106	986
Do -----	84	1,088	106	982	Do -----	54	1,085	110	975
Do -----	85	1,212	108	1,104	Do -----	98	1,027	106	921
Do -----	86	1,190	102	1,088	Do -----	99	1,097	102	995
Do -----	157	1,027	104	923	Do -----	101	975	106	869
Do -----	158	1,112	103	1,009	Do -----	102	1,100	110	990
Do -----	159	1,013	109	922	Do -----	103	1,009	109	900
Do -----	160	1,075	114	961	Do -----	104	1,044	111	933
Do -----	161	1,100	111	989	Do -----	105	918	103	815
Do -----	162	1,106	108	998	Do -----	106	1,081	110	971
Do -----	163	981	108	973	Do -----	107	1,000	98	902
Do -----	164	1,037	107	930	Do -----	108	1,104	107	997
Do -----	165	1,025	109	916	Do -----	109	962	103	859
Do -----	166	1,130	106	1,024	Do -----	110	1,088	113	975
Do -----	167	1,012	110	902	Do -----	111	964	102	862
Do -----	169	1,023	110	913	Do -----	112	1,125	96	1,029
Do -----	170	1,121	107	1,014	Do -----	113	1,180	110	1,070
Do -----	171	1,009	109	900	Do -----	114	1,131	108	1,023
Do -----	172	1,134	100	1,034	Do -----	115	1,150	101	1,049
Do -----	173	1,150	103	1,047	Do -----	116	1,125	100	1,025
Do -----	174	1,058	107	951	Do -----	117	1,093	103	990

NOTTINGHAM, August 28, 1828.

SIR: At your request for information relative to the tobacco (your property) taken from the warehouses at Nottingham by the British during the period of their invasion, I have to state that a part of your tobacco was used by my order, as commanding officer at Nottingham, for the purpose of erecting a breastwork for the defence of the place;

and to the exception of three or four hogsheads, I am confident, out of the sale I made to you of one hundred and five hogsheads, that the remainder was carried away by the enemy. I also recollect that Benjamin Oden, esq., remarked that a part of the tobacco thus used was sold by him to you.

With due respect, yours, very truly,

GEO. W. BISCOE.

CHAS. J. CALLETT, Esq.

DISTRICT OF COLUMBIA, }
County of Washington, } *to wit:*

On this 28th day of August, 1828, personally appeared George W. Biscoe before me, the subscriber, a justice of the peace in and for the county aforesaid, and made oath on the Holy Evangely of Almighty God that the facts as stated in the above and foregoing letter are correct and true, to the best of his knowledge and belief.

JAMES ORD, *Justice of the Peace.*

GEORGETOWN, *February 27, 1832.*

SIR: I have been requested by Mr. Callett to state to the committee over which you preside my knowledge and opinion of the destruction of the tobacco in the tobacco warehouses in the lower counties of Maryland by the enemy during the late war with England.

I have no personal knowledge of any except the warehouse and its contents at Cedar Point, in Charles county, which was certainly destroyed, so far as we could judge of the actions of men, in consequence of an attack on the enemy at that place, by the militia under the command of the late General Stuart, because the warehouse with the tobacco afforded protection to the American troops. A tobacco warehouse filled with tobacco is believed to be cannon-proof, and the house then full afforded complete protection to a portion of our troops. It was burned by the enemy in the evening of the day of the engagement. I have no knowledge of the circumstances attending the burning of other warehouses, but, from their situation, the complete protection they afforded to persons covered by them, and the generally prevailing opinion in that part of the country at the time, I have no doubt that most of them were destroyed to deprive our troops of shelter and protection.

I have the honor to remain, very respectfully, yours, &c.,

B. G. SEMMES.

Hon. W. C. WHITTLESEY,

Chairman of Com. of Claims, Ho. of Reps., Washington.

FEBRUARY 27 1832.

Having been requested by Mr. Callett, of Maryland, to state my knowledge of the manner of the destruction of the tobacco warehouse

at Cedar Point, on the Patuxent, I would remark that during the late war, I think in the summer of 1814, some schooners of the enemy were anchored off the warehouse; that some of the crew landed, and were in the act of taking away some of the tobacco, when General Stuart, the commander of the troops in the vicinity, ordered them down, and commenced an attack with artillery upon the enemy at the warehouse; that after firing several shots from cannon, &c., the warehouse was set fire to by the enemy and levelled to the ground, with all the tobacco then in the house. Had the attack not have been made by the American troops, it is believed that the house would not have been fired, as above and below on the Potomac tobacco warehouses were visited by the enemy and not destroyed. Being at the time acting as an aid to the general, I was present and saw the attack and firing of the tobacco warehouse.

D. JENIFER.

COMMITTEE OF CLAIMS,
House of Representatives.

NOTTINGHAM, *February 27, 1832.*

DEAR SIR: The statement which I am about to make, if necessary, I can verify on oath. I now do so on honor, as brigade commander of the militia of Maryland, and an officer holding a commission of surveyor and inspector of the revenue under the general government. In the request for information on the subject of the defence of Magruder's warehouses, in June, 1814, by a detachment of militia acting under my orders, in reply, I have to state that the captain in command reported to me his rencounter with the enemy at that place; he stated that on the near approach of the British barges, (said to be) under the command of Commodore Barney and Colonel Malcomb, of marines, he posted his men behind the warehouses, situated within thirty yards of the shore, and that so soon as his fire of musketry could be deemed effectual he commenced, and continued to do so for an hour or two, being under cover of the warehouses; finally, his ammunition became expended, and he was compelled to retire; the enemy then landed, and set fire to the warehouses, which were burned.

I am aware that you sustained considerable loss in tobacco there and elsewhere on the Patuxent, river from the circumstance of your having purchased of me more than one hundred hogsheads, which, with the exception of a few, say (to the best of my recollection) four or five, in the warehouses here, were either burned in Magruder's warehouses, at the period above stated, or was carried away by the enemy on their retreat from the city of Washington to the shipping at this place. At one period I used the tobacco in the warehouses here for military purposes, a part of which I recollect was your property, having sold it to you.

Wishing you success in your appeal to Congress, I remain, truly your obedient servant,

GEO. WASHINGTON BISCOE.

CHARLES J. CALLETT, Esq.

WASHINGTON COUNTY, }
 District of Columbia, } *to wit:*

On this 20th day of December, 1833, personally appeared before me, the subscriber, a justice of the peace in and for said county, Jesse Selby, and makes oath on the Holy Evangely of Almighty God, that he was stationed at Magruder's warehouse, on the Patuxent river, in June, 1814, in a company of Maryland militia, commanded by Captain Joshua Naylor, and that the said warehouse, he verily believes, was burned in consequence of the said company being there, and the said warehouse affording protection, and being occupied by them. This deponent further states, that Captain Naylor died in the year 1825.

Sworn before,

HENRY WERTZ, *Justice of the Peace.*

DISTRICT OF COLUMBIA, }
 Washington county, } *to wit:*

On this 20th day of February, 1835, before me, the subscriber, a justice of the peace in and for said county, personally appeared James Badin, and makes oath on the Holy Evangely of Almighty God, that General George W. Biscoe, commanding the Maryland militia, on the 17th day of June, 1814, (then Major Biscoe,) ordered the tobacco to be rolled out of the warehouse in Nottingham, Prince George's county, Maryland, and a large breastwork made of the tobacco, the cannon planted behind it, and then we fired on the British, who manned eleven barges, commanded by Commodore Barry, who, at that time, retreated; the heads were out of many hogsheads, and the tobacco a good deal torn out. The British, some time after, took the most of the tobacco from the warehouse, and they kept possession of the waters of the Patuxent river as high as Nottingham from that time until they burned the Capitol. Captain Naylor's company of Maryland militia were stationed behind Magruder's warehouse, and as soon as the British barges came within gun-shot commenced firing upon them, and continued until the ammunition was expended; they then retreated, and the enemy immediately landed, and set fire to the warehouse and burned all the tobacco within it. This was on the 17th day of June, 1814, as above stated, which day we prevented them from coming to Nottingham, which, probably, prevented that warehouse from sharing the same fate. This deponent further saith, that he was inspector at Magruder's warehouse, but commanded a company on that day at Nottingham. Charles J. Callett was a large owner of tobacco, and a very heavy sufferer. This deponent further saith, that he was appointed inspector in January, 1813, at Magruder's warehouse. Previous to his appointment, James Naylor was the inspector.

JAMES BADEN.

Sworn to and subscribed before me, the day and year first above written.

ROBERT CLARKE, *Justice of the Peace.*

The memorialists claim compensation for a quantity of tobacco, said to have been stored in the tobacco warehouse at Magruder's, in Prince George's county, Maryland, and destroyed by the British in June, 1814, in consequence of said premises having been used as a military post.

James Baden deposes that he was a qualified inspector of tobacco for Magruder's warehouse in 1813, 1814, and 1815, and that when he took possession of said warehouse in March, 1813, Rinaldo Johnson, senior, had stored in said warehouse sixty-eight hogsheads of tobacco, averaging 1,000 pounds each. That the tobacco thus stored by said Johnson was destroyed by the British naval forces in June, 1814, when the Maryland warehouses at Magruder's were burned by them. He further states that the said warehouses had been used by the militia as a work of defence and protection, being the only houses located on that shore of the river, and in consequence of their use and occupation, he believes, they were destroyed. He says these buildings were so occupied from the necessity of the case, and as soon as the troops were forced to retreat they were burned. He says Captain Naylor, who commanded the troops, died some years ago, as well as other officers.

Mr. Baden also testifies, in a separate deposition, that Mrs. Rinaldo Johnson had in the warehouse, at the time it was burned, eighty hogsheads of tobacco. He also testifies that tobacco was worth, after the war, from \$12 to \$15 per hundred.

General George W. Biscoe testifies that a company of militia acting under his orders, as major of the 17th regiment, were posted at Magruder's warehouse for its defence; and when the British barges ascended the river, on or about the 17th June, 1814, so soon as Captain Naylor (in command) deemed them to be in reach of his fire, commenced firing upon them from behind said warehouses, and continued to do so until his ammunition was exhausted. The enemy immediately landed and the militia retreated. The enemy then burned the warehouses, with all their contents. He always understood that Mr. Rinaldo Johnson and his wife, Ann E. Johnson, had a large quantity of tobacco in the warehouses at the time of the destruction.

Reference is also made to the case of Charles J. Callett, as in point, (contained in Report No. 211, H. R., 3d session 27th Congress, which is annexed.)

STATE OF MARYLAND, }
 Prince George's county, } *to wit:*

On this 27th day of January, in the year of our Lord one thousand eight hundred and forty-nine, James Baden personally appeared before me, the undersigned, a justice of the peace within and for the county aforesaid, and made oath on the Holy Evangelists of Almighty God, that in the month of June, (17th, 1814,) one thousand eight hundred and fourteen, the warehouse in Prince George's county, called Magruder's warehouse, having been occupied a short time previous by the American forces, was burned by the British, and that

Mrs. Rinaldo Johnson had in the warehouse at the time it was burned eighty hogsheads of tobacco ; and that the burning of said warehouse was in consequence of such previous military occupation by the American forces aforesaid.

JAS. BADEN, *Inspector.*

Subscribed and sworn to before me, this 27th day of January, 1849.

JAMES H. RAWLINGS,
Justice of the Peace.

MARYLAND, *Prince George's county, ss:*

I hereby certify that James H. Rawlings, gentleman, before whom the within and foregoing affidavit appears to have been made, was, on the day of the date thereof, and still is, one of the State of Maryland's justices of the peace in and for said county, duly commissioned and sworn.

In testimony whereof, I have hereunto subscribed my name and [L. s.] affixed the seal of Prince George's county court, this 19th day of February, A. D. 1849.

JNO. B. BROOKE,
Clerk of Prince George's County Court.

No. 115.—(See No. 31 also.)

Additional documents on file in the case of the representatives of Ann E. Johnson :

1. Deposition of James Baden.
2. Tobacco notes from State Department.
3. Letter from George W. Biscoe.
4. Copy of letter from General Winder.
5. Copy of letter from General Bowie.

FLOTILLA, *July 8, 1814.*

MY DEAR GENERAL: I have thought proper to send forward the information I received from Major Biscoe, and to point out the necessity of having some troops stationed here to act with the flotilla ; at the same time to inform the government of the impropriety of drawing the militia from this vicinity across the river for the defence of Calvert county. I will thank you to have the despatch forwarded by some trusty person ; and am yours, &c.,

JOSHUA BARNEY.

FEBRUARY 20, 1850.

The above letter was written at the time when the United States flotilla, commanded by Commodore Joshua Barney, were anchored at the port of Nottingham, Prince George's county, Maryland.

G. W. BISCOE.

The original letter, in the handwriting of Commodore Barney, is filed with the House committee, in the case of George Armstrong.

No. 31.

List of papers filed in the case of T. Johnson, administrator of Rinaldo Johnson :

1. Memorial.
2. Inspector's letter, (Cornick.)
3. Certificate of Inspector Baden.
4. Supplemental report of Committee on Public Expenditures, 3d session 29th Congress.
5. Affidavit of J. H. Rawlings.
6. Affidavit of George W. Biscoe, major 17th regiment.

Second Session.

7. Amendatory memorial.
 8. Affidavit of Jesse Selby.
 9. Letter of Third Auditor.
 10. Letter of administration.
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NOTTINGHAM, *February 1, 1849.*

DEAR SIR: Your letter bearing date January 23d is at hand and its contents observed. I renewed my memorial to Congress the present session for my tobacco claim, the merits of which, in my opinion, will test the success of others claiming indemnity for the loss of that species of property. I am advised by one member of Congress, General Chapman, to permit him to withhold my application until the board of commissioners are appointed by Congress, whose duty it will be to decide on all matters connected with the loss of private property and claims against the United States. I have done so, believing it will be much to my interest to delay, as the case would be referred to the same persons in committee as reported unfavorably the last session. I am confined by indisposition pretty much to the house, and have not had a chance to see Captain Baden, who gave his deposition in regard to my claim, which accompanies my papers, now on file at Washington. I will confer with him on the subject-matter of your letter. The inspectors' books at Magruder's warehouse were burnt with the house by the enemy, and I am sure Captain Baden cannot recollect the number of hogsheads or weights of Mr. Johnson's tobacco, and much do I regret it, as my feelings are alive to the well-doing of the family of a departed friend, for whom I had the highest regard. I this moment examined the definitive list, and find that T. R. Johnson made a deposite of 54 tobacco notes in the office of the board of commissioners, acting under the Ghent treaty, in the name of Ann E. Johnson—independent of 80 hogsheads of tobacco, and sundry plate

valued at \$500, as per memorial of the late Governor Joseph Kent. Present my kindest regards to W. T. Maddox, esq.

Very truly and respectfully, your obedient servant,

GEO. W. BISCOE.

GEO. F. MADDOX, Esq.

NOTTINGHAM, *August 18, 1814.*

SIR: As soon as you may find yourself justified in discharging the militia, you will oblige me by directing the sergeant and his party of the regulars, with the eighteen-pounder, to proceed to Upper Marlborough and await orders.

WM. H. WINDER,
Brigadier General, &c.

Major WASHINGTON BISCOE.

The above order, in the handwriting of General Winder, is filed with the House committee, in the case of George Armstrong.

MARCH 5, 1850.

I certify that the above is in the handwriting of my father, Wm. H. Winder.

CHAS. H. WINDER.

TREASURY DEPARTMENT,
Third Auditor's Office, November 30, 1850.

SIR: The Secretary of the Treasury has referred to this office your letter to him of the 27th instant, applying for a certified copy of a deposition of James Selby, relative to the destruction by the British, in 1814, of tobacco in Magruder's warehouse, and has directed that the copy should be furnished to you. I have therefore caused one to be made, and herewith transmit the same. The christian name of the deponent appears to be Jesse, not James.

Respectfully, your obedient servant,

JNO. S. GALLAHER,
Auditor.

Mr. C. YOUNG, Esq.,
Washington, D. C.

MARYLAND, *Prince George's County, to wit:*

The State of Maryland to Thomas Rinaldo Johnson, of Prince George's county, greeting:

Whereas Rinaldo Johnson, late of said county, deceased, died intestate, as it is said, we do therefore give and grant unto you the said

Thomas Rinaldo Johnson, full power and authority to administer all and singular the goods, chattels, and credits of the said deceased, lying and being within the State, not already administered, and to demand, collect, and levy, and in a legal manner require and receive all manner of debts due and owing to the said deceased; and well and faithfully to dispose of the same, and out of the goods, chattels, and credits of the said deceased you are well and truly to pay the debts due by the said deceased, so far as the same will extend, you having first taken your oath well and truly to administer the same, and to make or cause to be made a true and perfect inventory of all and singular the goods, chattels, and credits of the said deceased, together with a list of debts, sperate and desperate, which may come to your hands, possession, or knowledge, appraised in money, as also to render a true and just account of your administration, and to exhibit both to the register of the orphans' court of Prince George's county; which inventory you are to return on or before the 4th day of February now next ensuing, and an account within twelve calendar months; and lastly, we do hereby appoint you, the said Thomas Rinaldo Johnson, administrator *de bonis non* of the said deceased.

Given at Upper Marlborough town this 4th day of November, in the year of our Lord one thousand eight hundred and forty-seven.

Test :

JAMES HARPER,

Register of Wills for Prince George's Co.

STATE OF MARYLAND, }
Prince George's county, } *to wit:*

On this 18th day of March, A. D. eighteen hundred and fifty, personally appeared Captain James Baden before me, the subscriber, a justice of the peace in and for Prince George's county, and State aforesaid, and makes oath on the Holy Evangely of Almighty God, that directly after the war tobacco was worth from 10 to 15 dollars per hundred, and sold for that price per hundred pounds.

Sworn before—

JAMES H. RAWLING,

Justice of the Peace.

STATE OF MARYLAND, }
Prince George's county. } *scd.*

I hereby certify that it appears from the record and proceedings now on file in my office, that Captain James Baden, the above deponent, was inspector of tobacco at Magruder's warehouse, in and for said county, in the years 1813 and 1814.

And I hereby further certify that James H. Rawling, gentleman, before whom the foregoing affidavit was made, was on the day of the date thereof, and still is, one of the said State's justices of the peace, in and for said county, duly commissioned and sworn.

In testimony whereof, I have hereunto subscribed my name and [L. s.] affixed the seal of Prince George's county court, this fourth day of June, eighteen hundred and fifty.

JOHN B. BROOKE,

Clerk of Prince George's County Court.

To the honorable the Senate and House of Representatives of the United States :

The amendatory memorial of the undersigned, and on behalf of Mrs. Sally Ann Nuttrill, administratrix of Ann E. Johnson, respectfully sheweth that your petitioners heretofore presented their claim for relief to your honorable body at the last session of Congress. Since then it has been intimated to the undersigned that doubts as to the validity of the claim might be raised on account of the long period which has elapsed since the loss occurred and the presentation of his and her late memorial. The undersigned can easily remove such an impression, if it exist. By reference to the records in the Department of State, it can be seen that the late Hon. Joseph Kent filed, many years since, under the act of 2d March, 1827, among others, a claim for the tobacco for which your memorialist now claims remuneration. Such claims were not then allowed, but of late years they have been by Congress; your memorialist, on learning this latter fact, immediately after he could with propriety do so, for his letters of administration were granted in 1847, as appears by certificate annexed, and as soon as he could obtain the testimony which he could consider efficient, he then presented his claim. There being some difficulty as to the proper ownership of the tobacco, which is yet unsettled, between the estates of Mrs. Ann E. Johnson and Rinaldo Johnson, hence it is that the claims of both have been presented together. If Congress should take favorable action on the claim, it cannot be doubted but that the proper department, which may be authorized to settle it, will direct the payment to those who may be justly entitled to receive what Congress may allow.

In addition to former papers heretofore filed in support of this claim, the undersigned accompanies this with a copy of the deposition of Jesse Selby, now on file in the Third Auditor's office, and his letters of administration on the estate of Rinaldo Johnson.

All which is respectfully submitted.

THOS. RINALDO JOHNSON,
Administrator of Rinaldo Johnson, and
Agent for Mrs. Sally Ann Nuttrill,
Administratrix of Ann E. Johnson.

UNITED STATES OF AMERICA, }
District of Columbia. } *set:*

On this seventh day of December, personally appears before the subscriber, a justice of the peace in and for the county aforesaid, Thos. Rinaldo Johnson, and makes oath that the facts as stated by him in the memorial aforesaid, as to the presentation of the original thereof to Congress, are true, and he, the said Thos. Rinaldo Johnson, makes oath that to the best of his belief the other facts stated by him are true as set forth above.

Sworn to and subscribed before—

JOHN D. CLARK, *J. P.*

UNITED STATES OF AMERICA.

DEPARTMENT OF STATE.

To all to whom these presents shall come, greeting :

I certify that the papers hereunto annexed are true copies, transcribed from and carefully collated with the original papers on file in this department.

In testimony whereof, I, John M. Clayton, Secretary of State of the United States, have hereunto subscribed my name and caused the seal of the Department of State to be affixed.

Done at the city of Washington, this first day of April, A. D. [L. S.] 1850, and of the Independence of the United States of America the seventy-fourth.

J. M. CLAYTON.

PATUXENT RIVER,

Magruder's Warehouse, August 15, 1810.

Received of Rinaldo Johnson eight hogsheads crop tobacco, as under noted, deliverable to the bearer on demand.

R. J.—169.....	1,023—110.....	913
170.....	1,121—107.....	1,014
171.....	1,009—109.....	900
172.....	1,134—100.....	1,034
174.....	1,058—107.....	951
175.....	1,006—110.....	896
177.....	985—10....9.....	876
179.....	1,025—102.....	923

JAMES NAYLOR.

PATUXENT RIVER,

Magruder's Warehouse, March 21, 1810.

Received of Rinaldo Johnson one hogshead crop tobacco, as under noted, deliverable to the bearer on demand.

R. J.—11.....	806—106.....	700
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JAMES NAYLOR.

October 21, 1810.

Mr. Bunell will be as good as to inform Mr. Johnson that there is left three hogsheads of second tobacco on my books, for which he did not give notes* for the other evening ; he can have them at any time he will send down.

JAMES NAYLOR.

* Those notes were never received by me, nor by any other person for me, and are counted in the number of fifty-four hogsheads.

T. R. JOHNSON.

PATUXENT RIVER,
Magruder's Warehouse, June 7, 1810.

Received of Rinaldo Johnson three hogsheads crop tobacco, as under noted, deliverable to the bearer on demand.

R. J.—84.....	1,088—106	982
85.....	1,212—108	1,104
86.....	1,190—102	1,088

JAMES NAYLOR.

PATUXENT RIVER,
Magruder's Warehouse, August 16, 1810.

Received of Rinaldo Johnson four hogsheads second tobacco, as under noted, deliverable to the bearer on demand.

R. J.—105.....	918—103.....	815
106.....	1,081—110.....	971
107.....	1,000— 98.....	902
108.....	1,104—107.....	997

JAMES NAYLOR.

PATUXENT RIVER,
Magruder's Warehouse, September 28, 1810.

Received of Rinaldo Johnson six hogsheads second tobacco, as under noted, deliverable to the bearer on demand.

R. J.—172.....	1,087—102.....	985
173.....	1,243— 98.....	1,145
174.....	1,156—104.....	1,052
175.....	1,225—106.....	1,119
176.....	1,256—106... ..	1,150
177.....	1,188—102.....	1,086

JAMES NAYLOR.

PATUXENT RIVER,
Magruder's Warehouse, March 24, 1810.

Received of Rinaldo Johnson one hogshead second tobacco, as under noted, deliverable to the bearer on demand.

R. J.—12.....	844—107.....	737
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JAMES NAYLOR.

PATUXENT RIVER,
Magruder's Warehouse, March 21, 1810.

Received of Rinaldo Johnson one hogshead crop tobacco, as under noted, deliverable to the bearer on demand.

R. J.—6.....	862— 96.....	766
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JAMES NAYLOR.

PATUXENT RIVER,
Magruder's Warehouse, June 5, 1810.

Received of Rinaldo Johnson four hogsheads second tobacco, as under noted, deliverable to the bearer on demand.

R. J.—50.....	1,069—108.....	961
52.....	1,058—108.....	950
53.....	1,092—106.....	986
54.....	1,085—110.....	975

JAMES NAYLOR.

PATUXENT RIVER,
Magruder's Warehouse, September 28, 1810.

Received of Rinaldo Johnson four hogsheads crop tobacco, as under noted, deliverable to the bearer on demand.

R. J.—277.....	1,225—100.....	1,125
278.....	1,275—102.....	1,173
279.....	1,280—106.....	1,174
280.....	1,208—104.....	1,104

JAMES NAYLOR.

PATUXENT RIVER,
Magruder's Warehouse, August 13, 1810.

Received of Rinaldo Johnson two hogsheads second tobacco, as under noted, deliverable to the bearer on demand.

R. J.—98.....	1,027—106.....	921
99.....	1,097—102.....	995

JAMES NAYLOR.

PATUXENT RIVER,
Magruder's Warehouse, August 16, 1810.

Received of Rinaldo Johnson four hogsheads second tobacco, as under noted, deliverable to the bearer on demand.

R. J.—101.....	975—106.....	869
102.....	1,100—110.....	990
103.....	1,009—109.....	900
104.....	1,044—111.....	933

JAMES NAYLOR.

PATUXENT RIVER,
Magruder's Warehouse, August 17, 1810.

Received of Rinaldo Johnson nine hogsheads second tobacco, as under noted, deliverable to the bearer on demand.

R. J.—109.....	962—103.....	859
110.....	1,088—113.....	875

R. J.—111.....	964—102.....	862
112.....	1,125— 96.....	1,029
113.....	1,180—110.....	1,070
114.....	1,131—108.....	1,023
115.....	1,150—101.....	1,049
116.....	1,125—100.....	1,025
117.....	1,093—103.....	990

JAMES NAYLOR.

PATUXENT RIVER,
Magruder's Warehouse, March 21, 1810.

Received of Rinaldo Johnson two hogsheads second tobacco, as under noted, deliverable to the bearer on demand.

R. J.—2.....	942—102.....	840
3.....	837—100.....	737

JAMES NAYLOR.

PATUXENT RIVER,
Magruder's Warehouse, March 24, 1810.

Received of Rinaldo Johnson one hogshead second tobacco, as under noted, deliverable to the bearer on demand.

R. J.—8.....	906—103.....	803
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JAMES NAYLOR.

PATUXENT RIVER,
Magruder's Warehouse, March 24, 1810.

Received of Rinaldo Johnson one hogshead second tobacco, as under noted, deliverable to the bearer on demand.

R. J.—10.....	968—106.....	862
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JAMES NAYLOR.

April, 1850.

The tobacco notes recited within are on file in the Department of State, with the petition of Joseph Kent, late a senator of the United States, and administrator of Rinaldo Johnson, upon a claim for said estate, under the convention of July 12, 1822.

Under that convention nothing was allowed for tobacco destroyed by the British. For this statement reference is respectfully made to the Department of State.

M. C. YOUNG,
Attorney for Claimants.

IN THE SENATE OF THE UNITED STATES.

Mr. CLAY, from the Committee of Claims, submitted a report, (No. —,) accompanied by the following bill; which was read and passed to a second reading.

A BILL for the relief of Hodges & Lansdale, and the legal representatives of Rinaldo Johnson, deceased.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the proper accounting officers of the treasury shall audit the claims of Hodges & Lansdale, and of the representatives of Rinaldo Johnson, for tobacco destroyed by the British in eighteen hundred and fourteen, at the warehouses at Nottingham and Magruder's Ferry, in Prince George's county, Maryland, and from such proof as may be exhibited to them within six months after the passage of this act, ascertain the quantity and value of their tobacco so destroyed, and that the amount so ascertained shall be paid out of any money in the treasury not otherwise appropriated to the said Hodges & Lansdale, and the legal representatives of Rinaldo Johnson, deceased.

IN THE SENATE OF THE UNITED STATES.

Mr. ———, from the Committee of Claims, submitted a report, (No. —,) accompanied by the following bill; which was read and passed to a second reading.

A BILL for the relief of the legal representatives of Rinaldo Johnson and Ann E. Johnson, deceased.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the proper accounting officers of the treasury shall audit the claims of the legal representatives of Rinaldo Johnson, and of Ann E. Johnson, for tobacco destroyed by the British in eighteen hundred and fourteen, at the warehouse at Magruder's Ferry, in Prince George's county, Maryland, and from such competent proof as may be exhibited to them within six months after the passage of this act, ascertain the quantity and value of their tobacco so destroyed, and that the amount so ascertained shall be paid out of any money in the treasury not otherwise appropriated, to the said legal representatives of Rinaldo Johnson, and of Ann E. Johnson, deceased.

IN THE SENATE OF THE UNITED STATES, *April 16, 1852.*

Mr. PRATT made the following report, (to accompany bill S. No. 366.)

The Committee of Claims, to whom were referred the petition of the widow of Rinaldo Johnson, and the petition of Hodges & Lansdale, providing indemnity for tobacco destroyed by the British in 1814, have given the subject a thorough investigation, and now report:

That Commodore Barney, in 1814, commanded the United States flotilla designed by the American government to protect the Chesapeake bay and its tributaries from the naval force of the enemy; that, to prevent the capture of the vessels under his command, he was compelled to abandon the Chesapeake, and was induced to sail up the Patuxent river, one of its tributaries, with the hope that the British would be unable, or at least unwilling, to follow with their larger vessels. This expectation of the commodore was not realized; he was pursued by the enemy, and was ultimately compelled to blow up his vessels to prevent their capture.

It is well known to the Senate that from this period the Patuxent river was permanently occupied by the naval forces of the enemy, and became the point from which various military expeditions were ordered against the surrounding country, terminating with the capture of Washington and the burning of the Capitol. General Winder was placed in command of this military division; the militia was called out to resist the landing of the British forces, and for a considerable period were successful in several instances in preventing the landing, and in all instances in driving the enemy back to their vessels.

It appears, from the evidence, that two public warehouses had been erected many years before this period, upon the margin of the Patuxent, for the inspection and deposit of the tobacco grown by the citizens of Prince George's county—one at the village of Nottingham, the other at Magruder's Ferry; that these houses were, in 1814, filled with hogsheads of tobacco, the property of the planters of that county, or of merchants who had purchased it for shipment; and that the tobacco for which remuneration is now claimed by the petitioner, R. Johnson, had been deposited in the warehouse at Magruder's Ferry; and that the tobacco for which payment is asked by Hodges & Lansdale, was deposited in the warehouse at Nottingham. The evidence conclusively establishes the fact that the warehouse at Magruder's Ferry was burned by the British, with all the tobacco it contained; and that all the tobacco in the warehouse at Nottingham was either taken away or burned by the enemy.

In investigating the right of the petitioners to indemnity from the federal government, your committee at once perceive that the petitioners could never have claimed indemnity under the general laws of 1816 and 1817, because the relief designed to be afforded by those acts *expressly and exclusively* applied to injuries to *real property*. The act of 1816 provides "that any person who, in the time aforesaid, has

sustained damages by the destruction of his or her *house or building* by the enemy, while the same was occupied as a military deposite under the authority of an officer or agent of the United States, shall be allowed and paid the amount of such damage, provided it shall appear that such occupation was the cause of its destruction."

Your committee have been unable to recognize the force or propriety of the distinction which makes the United States liable for *real property* destroyed by the enemy, and which exempts the government from liability for *personal property* destroyed under the same circumstances; they are unable to appreciate the justice of a rule which makes the government liable for a house burned by the enemy, and exempts it from liability for the personal property burned in the house.

Your committee are of opinion that the United States should be held liable to reimburse her citizens whenever private property has been (in accordance with the usages of civilized warfare) destroyed by a public enemy, *because of its use* for military purposes by the authority of an officer or agent of the government.

Your committee believe that the facts, to which they will now very briefly advert, fully establish the right of the petitioners to relief, under the principle here laid down.

First. In reference to the warehouse at Magruder's Ferry, it appears that a considerable American force was stationed behind this warehouse, which, being filled with tobacco, afforded complete protection against the cannon of the enemy, and that a battle was fought with the British vessels, which continued until the ammunition of our troops was exhausted, and they were consequently obliged to retreat. It is clearly proven that upon the retreat of the American force, the British landed and burned the warehouse, with the tobacco of the petitioner, R. Johnson, and others, therein contained. In regard to the tobacco destroyed at the Nottingham warehouse, it appears that this warehouse was for a considerable time the depository of the military stores intended for the use of the militia employed in the defence of this exposed section of Maryland, and that upon one occasion the tobacco was rolled, by the directions of the officer in command, from this house, with which a breastwork was formed, from behind which the enemy were fought and repulsed. It also appears that when the enemy subsequently landed and proceeded to Washington, they destroyed or took away all the tobacco deposited in this warehouse which belonged to the petitioners, Hodges & Lansdale, and others.

Your committee further report that no possible doubt can exist as to the quantity of the tobacco which belonged to the petitioners, because it is evidenced by tobacco notes now in their possession, or deposited in the State Department, which designate each hogshead and the net weight of its contents. There are many precedents, to which your committee do not deem it necessary to refer, where the government have *paid* for personal property destroyed under similar circumstances. The value of the tobacco is also established by satisfactory proof, but the committee have deemed it better, in the bill which they have prepared for the relief of the petitioners, to provide that the proper

accounting officers of the treasury shall ascertain, from such proof as may be laid before them, the quantity and value of the tobacco destroyed, and shall pay the value so to be ascertained.

There being no distinction in principle in the right of the petitioners to relief, the committee have reported a bill for their joint relief, which they confidently recommend to the favorable consideration of the Senate.

IN THE SENATE OF THE UNITED STATES, *December 21, 1853.*

Mr. HAMLIN made the following report, (to accompany bill S. No. 50.)

The Committee on Commerce, to whom was referred the petition of Noah Miller, ask leave to submit the following report:

The petition referred is in the words and figures following, viz:

To the honorable the Senate and House of Representatives in Congress assembled, A. D. 1837:

Your petitioner, Noah Miller, of Lincolnville, in the State of Maine, respectfully represents:

That in the month of November, 1814, while the British troops were in possession of Castine, I, the said Noah Miller, hired a large whale boat, at Lincolnville, and four men, on wages, to intercept, in the bay, supplies that were expected to arrive at Castine, for the British troops, from Halifax. I procured the necessary arms and fitted out the boat, and made all proper arrangements for such an enterprise. I fortunately espied, near Turtle Head, in Penobscot bay, about five or six miles from Castine, a British vessel, for the capture of which I immediately made preparation. The vessel showed a number of men on deck. My force was four men besides myself. On approaching the vessel, I was mistaken for a pilot boat from Castine, sent out to pilot them in. The enemy was not undeceived till I had stationed my men at the proper positions on her deck, and approached to demand the helm, and informed the captain that he and his crew were my prisoners, and that his vessel was my prize. The vessel proved to be the schooner Mary, from Halifax, laden with bales of merchandise and a large amount of clothing for the British troops at Castine. As soon as the prisoners were disposed of for our safety, I put about and made all sail for Camden, a distance of twenty miles. These movements were espied from the heights near Castine, and immediate pursuit was made by the British, who pressed into their service an American pilot, who, by accident or design, ran the vessel aground, by which they were detained three hours, and enabled me to reach Camden with my prize. When all were secured, so that I could leave the helm, and on our way to Camden, I went into the

cabin, where was a lady in the greatest distress of mind, arising from apprehension of being massacred or of great ill usage, (for she had been told that the Americans were no better than savages.) She was the wife of the captain, and had retired to her berth in despair. I relieved her apprehensions with assurances of honorable protection. The captain had his furniture and goods on board, and was going to take up his residence at Castine, and engage in trade there. On arriving at Camden, I procured a boarding-house for the captain and his lady, engaging the kindest attention to them, at my own expense, while they should remain, and gave up to them all their furniture, goods, and effects, of every description, as I thought was becoming the American character to do.

Soon after the capture, and on our way to Camden, the supercargo of the *Mary*, Mr. McWalters, offered me £10,000 as a ransom for the schooner and cargo. I rejected the proposition. It would hardly have comported with the dictates of patriotism to have suffered the enemy to receive the "aid and comfort" of such a cargo of supplies, to enable them to maintain their position at Castine, and to annoy our commerce and our citizens at that commanding point. I declined the proposition while the enemy were under a press of sail to overtake us. There were on board the schooner *Mary* letters from sundry merchants and others in England, to the governor at Halifax, and by him transmitted to the British commander at Castine, which contained intelligence interesting to our government.

Apprehending great insecurity in the captured goods remaining at Camden, exposed as it was, I chartered a great number of wagons, and had them all conveyed the same night to Warren, Waldoborough, and afterwards to Portland, except what belonged to the crew and passengers on board the schooner, which I gave up to them. The next day the *Furieuse* 74, Commodore Muncy, appeared off Camden, and demanded the restoration of the British schooner and cargo. Commodore Muncy sent in a special message, conveying the threat, that unless I gave up the vessel, &c., he would have me at all events, and hang me up to the yard-arm; and by the same message, a public offer was made of a reward of \$10,000 for my arrest and delivery on board the *Furieuse*, accompanied by threats to destroy the town. Under such influences, some of the citizens of Camden held a meeting, as I was informed, at which it was determined to arrest me, and deliver me up to Commodore Muncy. I made it hazardous, if not impracticable, to carry that resolution into effect. I immediately received from General King orders for calling out the militia in the neighboring towns, for the defence of Camden. I was then a major in the militia. I communicated the orders, the troops were raised, and I appeared personally among those who had resolved at a public meeting to arrest me, and deliver me to the British commodore, and was ready to render such services as I might be able, to defend them against the threatened attack of the common enemy. Josiah Hook, esq., was then the collector of the district of Castine. He appeared at Camden, and took *great interest in the captured vessel and cargo*. He advised me by all means to give both up to the government, on whose account, as collector, he would take possession, and proceed

against them as a seizure ; telling me that was the only way to protect Camden and the country around ; and that, as a private citizen, I had no right to make the capture. Others told me I had no right to the property captured ; and though some expressed a different opinion, yet I yielded to the collector's views and solicitations, under a misapprehension, as I have recently been led to believe, of my legal and just rights. And I have no doubt, from subsequent events, that many if not most of those who counselled me to give up the prize to the government, and to the management of its revenue officer, were stimulated to give me such counsel by the collector himself ; but I gave it up, notwithstanding all the hazard I had run to capture, and the trouble I had been at to secure it. But for this great error, committed under misapprehension of my rights, produced, as I have reason to believe, by the revenue officers of the government, I should not now have occasion from pecuniary necessity to present this petition to your honorable body ; *thirty-three thousand eight hundred dollars* having been received into the treasury of the United States as a *moiety* of the net proceeds of the vessel and cargo, after condemnation and sale, which afterwards took place. While Commodore Muncy was off Camden, Mr. Hook procured Joseph Farley, esq., collector of the adjoining district of Waldoborough, to go on board of the *Furieuse* with the municipal authorities of Camden, and represent the facts of the case ; and he did so. They informed Commodore Muncy that the capture was the private act of myself as an individual, unconnected with the government, and unauthorized by it ; that neither the collector of Castine, nor any other officer of the government, had anything to do with it, nor had any interest in nor any control over the matter. They further represented that I had carried all the goods away, and secreted them, and therefore they could not restore them. This information, accompanied by suitable intercession in behalf of themselves and the people of Camden, had the effect to assuage the commodore's wrath against *them*, although it exposed *me* still more to the halter which dangled to the yard-arm of the *Furieuse*. The government's officers having made sure of the prize, the humble individual who had hazarded something in taking it, and had done the country "*some service*," was left to escape arrest by his own fellow-citizens, acting under the temporary lure of \$10,000 reward, and to keep his neck out of the commodore's noose the best way he could. I was subsequently appointed an officer of the customs at Belfast, and in that capacity I made seizure of a large quantity of beef, belonging to one Whittier, of Belfast, on its way to Castine, to afford "aid and comfort" to the enemy. It was condemned and sold. Whittier swore vengeance against me, in which he had the countenance and support of a number of the citizens who were driving a profitable trade with the British, to which I had, as an officer of the customs, often presented *serious obstacles*. Whittier attacked me in the streets of Belfast with a knife, by which I was severely and dangerously wounded ; the effects of which were disastrous to all my future hopes and prospects through life. I was rendered a helpless cripple, my nervous system was shattered, and I have been wholly unable to attend to any sort of business whatever from that time to this, for the

support of myself and my family. My condition is that of poverty and of helplessness, except from the justice of my country, whose coffers were replenished in its time of need at the expense of my own.

I therefore most respectfully, and, in my situation, must say *humbly*, pray that the proceeds of said schooner Mary and cargo may be restored to me, or such other measure of justice meted out to me as you in your wisdom may deem suitable and proper, under the circumstances of the case.

NOAH MILLER.

STATE OF MAINE, *Waldo, ss*:

Then personally appeared the above named Noah Miller, and made oath that the facts detailed in the foregoing petition, by him signed, relating to the capture, by him, as a private individual, and the subsequent disposition, of the British schooner Mary, and her cargo, in the late war, are true.

Before me:

JOSEPH MILLER,
Justice of the Peace.

NOVEMBER 20, 1837.

The occurrences related in the foregoing memorial must necessarily have been of general notoriety. *Material errors* in a statement of them could hardly have escaped detection, and are not therefore *to be presumed*.

The principal and most material facts stated seem sufficiently established by circumstances, and by extrinsic proofs. *Thus* sustained in prominent points, the inference is natural and fair, that the whole relation is true. It will be perceived, too, that the statement is verified by the oath of the memorialist. This cannot fail to strengthen the presumption of its correctness. Noah Miller possessed in a high degree, the respect and confidence of the community with which he was conversant. It is not lightly to be presumed that *such* a man, especially when under the solemn influences of an oath, even though he should indulge the belief that such perversion might strengthen the application he has submitted, would *intentionally* pervert the truth. A man so eminently distinguished by intrepid bravery, and by elevated love of country, is seldom found to unite in his character the opposite and degrading quality of sordid and mercenary selfishness. And it would accord still less with all reasonable probabilities, to suppose so of one who, when pressed by danger, not merely of loss of property, but of *life* even, could yet find, in the impulses of his own integrity and fidelity to his country, motives strong enough to impel him to reject the proffer made to him by the supercargo of the vessel he had so gallantly captured, of *ten thousand pounds*, (£10,000,) if he would suffer his prize to proceed to her destined port, there to strengthen the hands of the public enemy. Influenced by such considerations, and after a careful review of the proofs exhibited, your committee are constrained to believe that the facts alluded to are fairly and truly set out by the memorialist.

They are next led to inquire whether it accord with the past usages

of the government, to grant the prayer of the petitioner?—whether justice to the individual applying, require it?—whether a policy just and wise, with reference to its continued and prospective influences upon the national interests and character, demand it?

In regard to the first mentioned topic, your committee ask leave to say that, from the earliest periods of our history, it is believed that the policy has always obtained, of assigning to captors an adequate portion of the avails of all prizes made upon the ocean, *flagrante bello*. By the act of April 23, 1800, “for the better government of the navy of the United States,” (3d vol. United States Laws, p. 360, sec. 5,) it is provided, “That the proceeds of all ships and vessels, and the goods taken on board of them, which shall be adjudged good prize, shall, when of equal or superior force to the vessel or vessels making the capture, be the sole property of the captors; and when of inferior force, shall be divided equally between the United States and the officers and men making the capture.” Similar provisions are found in the act of June 28, 1798, (vol. 3, U. S. Laws, pp. 71, 72.) The *principle*, it is believed, has always obtained. It is true that these provisions are made with reference to the *navy of the United States*, or the *public armed vessels* of the nation. But the *reason* upon which that policy is founded is still *more* manifestly apparent in the case of captures thus made by the unaided means, skill, enterprise, and courage of *individual* citizens. The United States, in this class of causes, furnishing *no portion of the force*, incurring *no part of the risk*, and being in no wise the meritorious cause of the capture, can, *in justice*, claim *no part of the proceeds*. Nor is this rule, thus modified, without the sanction of Congress. An express recognition of it may be found in the acts of June 25, 1798, (3d vol. U. S. Laws, p. 69, sec. 2,) and of 26th June, 1812, (4th vol. U. S. Laws, p. 450, sec. 4,) and in the acts of March 3, 1813, (4th vol. U. S. Laws, p. 518,) of August 2, 1813, (vol. 4, Laws U. S., pp. 625 and 656;) and in other acts, the principle is carried so far as to require the payment to individual citizens of a *bounty* for the *destruction* of vessels of the enemy, and a bounty for *prisoners taken, out of the public treasury*. No doubt, then, it is believed, will be entertained, but that it accords with the ordinary jurisprudence of the country and with the whole course of its legislation, to concede to the captors, in such a case as this, the *entire* proceeds of the prize. But it may be objected, that *this case* has been actually *adjudicated* upon, and the proceeds of the capture *disposed* of according to the provisions of the revenue laws—the one moiety having been paid, some thirty years ago, into the treasury of the United States, and the other moiety distributed between the collector (Mr. Hook) and those who assisted at the capture, and perhaps to others. Such an objection, so far as relates to such *individuals* as may have received distributary shares of the proceeds of the capture, your committee think is entitled to much consideration.

It would be of a dangerous consequence if Congress were to attempt to disturb that distribution, so long ago made—made, probably, under the sanction of the government for the time being. And even if it were of less injurious or less doubtful policy, it would not probably be

deemed *competent* for Congress thus to interfere. Fortunately, perhaps, for the memorialist, even on *this* point there are "precedents on file." The case presented to Congress in 1814, and which resulted in "An act for the relief of David Porter, and his officers and crews," was in some respects analogous to this.—(See vol. 4, Laws U. S., p. 683.) Decrees of condemnation had been rendered in like manner; but, by the law referred to *that portion only* of the proceeds of the captures made, *which had accrued to the United States*, was directed to be relinquished and paid over to the captors. So in the case of the captures made near the island of Barrataria, in September, 1814, by Colonel George F. Ross and Captain Daniel Patterson; "*so much of the net proceeds of the forfeiture and penalties, not exceeding \$50,000, as accrued to the United States*, by the decree of condemnation rendered *for a violation of the laws of the United States*," was directed to be paid over to the captors—(see vol. 6, Laws U. S., pp. 118, 171)—leaving, in both cases, such distribution as may have been made to *individuals*, under color of the revenue laws, *undisturbed*; thus furnishing precedents strongly enforcing the general principle, and at the same time illustrating the exception. Assuming, then, that the principal facts in this case are sufficiently established, and that, with the limitations herein above explained, it accords with past usages of the government in similar cases to grant the relief prayed for, it remains next to consider how far *justice* to the memorialist requires it. To arrive at a proper conclusion on this point, it is very necessary to have regard to the condition of the country at the time and place where the transactions alluded to occurred. It is not the desire of your committee, nor would it be appropriate, to crowd into this report any unnecessary matter of historical detail; but it may not be improper to call to the recollection of the Senate, that at the period alluded to Castine was in the possession of the enemy; his vessels of war were hovering over the coasts, and in great force commanding the bay. What his ulterior intentions may have been, is left, perhaps, in some sort, to conjecture; but, cut off as he was, from direct intercourse with the interior, it was of the utmost importance to intercept also his supplies, and to diminish his resources, in their progress up the bay. Fully and completely to accomplish that end, a superior naval force was undoubtedly requisite. But *such* a naval force the government had not then, at that point, in its control. In *such* circumstances, what resource remained but that which was to be sought for in the adventurous enterprise, the active vigilance, the hardy courage, and the ardent and devoted patriotism, of its unsupported individual citizens? There was no other. And happily for the country, and for the honor of its people, that resource, in *such an exigency*, did not fail! Many there doubtless were, who, on that memorable occasion, were distinguished by their devotion to their country, and by their brave and gallant bearing; but among them, none seemed more conspicuous than Noah Miller. Alfred Johnson whose affidavit is appended to this report, testifies of him, that "Major Miller was a very active officer of the militia, and signalized himself as an efficient partisan, and a vigilant observer of the movements of the enemy in our vicinity; and it is my opinion, that no one person in this quarter

was oftener mentioned as a brave and useful friend of his country during that war. About one year, according to my best recollection, he was in the actual service of the United States as a captain of volunteers; and, after the expiration of this service, it was understood—and I have no reason to doubt it—that he was in the revenue department of the government—in what capacity, or whether officially or as a volunteer, I cannot say—and assisted to prevent an illicit intercourse with the enemy. He received a wound in a personal rencounter, growing out of his said employment. During the war he made a capture of a valuable vessel and cargo, attempting to introduce goods of the enemy into this country; and, in doing this, it was at the time the general opinion that the said capture was made by him as a private citizen, at his own risk, responsibility, and expense.”

William P. Preble, esq., who, as district attorney of the United States, conducted the prosecution which resulted in the condemnation of the captured vessel, and whose deposition is also hereto appended, thus testifies of the memorialist: “I well remember said Miller was in those days distinguished for his zeal and activity (*after* I knew him) in carrying on a partisan warfare against the enemy and the contraband trade carried on with them in that quarter, while the British forces were in possession of Castine.” And in respect to the capture he made, he says: “I further depose and say, that it was well understood and notorious that said Mary and cargo *were in fact captured* and seized by Major Noah Miller, who, having discovered the vessel from the shore, put off in a boat with a small crew, and took possession of her, and brought her into Camden; and that the capture was *wholly* due to the activity and enterprise of said Miller and his assistants. I further depose, that I well remember it was understood at that time that said Miller met with a good deal of difficulty in securing the property after its capture, and that it was wholly owing to his active exertions, aided by his boatmen, that the property was removed to a place of safety; and that, if it had not been so removed, it would have been rescued by the enemy’s armed forces then in the vicinity. I have since understood, and now fully believe, that said Miller, in making said capture, and securing said property, *acted solely from his own promptings*, and in no respect under the authority and instructions of Mr. Hook, the collector.”

Mr. Preble, in a subsequent communication, again says: “The act of the capture was an act of Miller’s own devising and enterprise, unprompted by any one, and unaided by any one except his boat’s crew. Miller continued afterwards in the United States service as inspector, and until our troubles of that period ceased, and was very active, vigilant, and enterprising, and *no man did better service* than he. He was the *terror* of smugglers and traders with the enemy. More than once he barely escaped with his life; so that it became necessary to caution him to be less venturesome and daring.”

These extracts are made for the purpose of vindicating the character of the memorialist, and the nature of the important services he rendered.

A more minute examination of the proofs will sufficiently demonstrate, that in respect to the particular transaction upon which his

application is founded, the conception of the plan, and the enterprise itself, *were all his own*; the risk and the danger of its execution were emphatically his; and he alone was originally responsible for the *entire expense*. With what skill, and perseverance, and gallantry, the enterprise was accomplished, also appears. If, by such exploits, the public enemy were more straitened in their quarters—if they were harrassed by repeated alarms—if their supplies were cut off, or their resources diminished—these and all other *military* advantages resulting from them belonged to the country, and the country has received them. But it is not perceived on what principle of natural justice this memorialist should be deprived of the pecuniary fruits of his own, his individual and voluntary enterprise—an enterprise conceived in boldness, and executed with consummate address, and at great peril of life. “The laborer,” it is said, “is worthy of his hire.” And this government, whose strength consists in the affections of the people, and in the confidence which *they* have in its liberal justice, should be the last to render itself justly obnoxious to the imputation of “reaping where it has not sown, and gathering where it has in no wise strewed.”

It is not only just, then, your committee venture respectfully to say, that whatsoever has accrued to the national treasury solely by reason of the individual efforts, skill, and gallant conduct of the memorialist, should be returned to him, but wise, also, and in accordance with the dictates of the soundest policy. Incentives to patriotism and to virtue cannot be too much multiplied; nor is anything unimportant which may in future affect the character or moral sentiment of the nation. What lustre has been reflected upon the national character by those individual acts of intrepidity, so bold in design, so skillful and so perilous in their execution, which, when the pressure of war was upon us, have sometimes illustrated the career of those in private life, as well as adorned the characters of those in the public employ! It is fit that they should be brought out in bold relief, and inscribed on the public archives! And who that values inflexible patriotism and incorruptible integrity, looking forward to the future, would desire to see that page torn from our history, which records that honors were awarded, and pecuniary rewards were given, to such men as Paulding, Williams, and Van Wert? In short, it seems to result that justice, the past practices of the government, and a wise and sound policy, all tend to sustain the principle upon which the application of the memorialist is based. But there are yet difficulties which embarrass greatly the further progress of the committee towards a just and satisfactory conclusion.

No doubt, it is believed, can exist, but that the enterprise which resulted in the capture of the Mary, and of the clothing and supplies for the British troops at Castine, and the other articles of British merchandise on board, originated *exclusively* with the memorialist. No doubt is entertained but that he alone hired the small boat which was employed in the capture; and that he alone, and on his *own account* hired, on *stipulated wages*, the men employed in the operation. It was *he* who became *insurer* against the risk, and he alone who became personally responsible for the payment of the men, and the hire

of the boat ; and *that* responsibility, it is presumed, he faithfully discharged. It is very plainly inferable, also, from the exhibits, that in addition to their stipulated wages, the men so employed by the memorialist, and a Major Ulmer, (of whom respectful mention is made in the exhibits, and who was taken on board of the prize after her capture, in order that she might be more safely and more certainly conducted into Camden,) received out of the proceeds of the capture a thousand dollars or more, each, as *their* proportion, respectively, of the proceeds which were distributed. But it is urged, in behalf of those men, if it should be the opinion of Congress that the memorialist receive any part of that moiety which was paid into the national treasury, that *then they* ought, respectively, to receive some suitable proportion of it also. When expeditions of this sort have heretofore, in time of war, been undertaken and fitted out *solely* by individual and private means, and such expeditions have resulted in making prize of the vessels of the enemy, it is believed to have been the policy of the law to leave the distribution of the proceeds of the prize to be determined by *such contract* or agreement as may have been made by the undertaker with the men he employs. But if *no contract* exist between them in this regard, then it is supposed to have been the policy of the law to require that those proceeds should be distributed according to the rule of proportion adopted in the naval service of the United States. In *this* case your committee are not satisfied that *any* claim is justly and fairly made out, except that of the memorialist ; and yet, in the view of the supposed rule of policy alluded to, they are not prepared to say that none can exist. And they do not desire, by anticipation, and by a proposed disposition of the whole fund, to preclude it.

The present application seems to have been before Congress for many years. And in the one or the other House, several reports, all of them in favor of the claim, are said to have been made upon it. But so far as your committee are advised, no final action has, in either House, been had upon it. In February, 1838, the subject was very elaborately discussed, in a report made by the Committee on Commerce of the Senate, and the justice of the claim very strongly urged. During the last session of the Senate the memorial was again referred to the same committee, and that committee adopted, *in extenso*, the report alluded to of 1838, and introduced a bill in accordance with it ; but that bill was not finally acted upon.

And now a rumor exists (of the truth of which, however, your committee have no knowledge) that the memorialist is dead. But if the fact be so, it can hardly be considered as requiring any other change in the action of the Senate upon it, except that of so shaping its legislation as that the legal representatives of the memorialist may be enabled to receive whatsoever sum shall be appropriated. The *justice* of the claim will be the same, the policy of allowing it the same, and the moral and political right of the government to retain the money it has so received can be in no wise strengthened by that event.

The bill reported to the Senate in 1838, and recommended to its favor by its committee, purported to award to the memorialist ten thousand dollars, that sum being less than one-third of that part of

the net proceeds of the capture which went into the national treasury. The Committee on Commerce, to which the memorial was referred during the last session of the Senate, recommended the appropriation of the same sum.

And although it may not comport fully with the grounds assumed by your committee, and the reasoning which they have endeavored, in this report, to enforce, to limit the proposed appropriation to so small a part of the money which has been paid over to the government in consequence of the capture, yet, in view of the difficulties hereinbefore adverted to, and not uninfluenced in this regard by the concurring opinions heretofore expressed by the committees to which the subject had been at different times referred, they have deemed it expedient again to recommend the appropriation of the same sum.

In conformity with this determination, they accordingly herewith present a bill, and respectfully recommend it to the favorable consideration of the Senate.

Noah Miller is now deceased, and the bill reported is for the relief of his legal representatives, and others interested therein, to be paid in such proportion to each as the Secretary of the Treasury shall determine.

No. 1.

I, David Alden, of Northport, in the State of Maine, do testify and say: That, some time in the month of November, in the year 1814, I was on the shore of Penobscot bay, in said town of Northport, about twelve miles from Castine. I saw a boat board a sloop in the bay. Directly after they stood in for the land where I then was, and when they had got near the shore, the boat came on shore, and I found the commander of the boat to be Major Noah Miller, of Northport, and he had two Englishmen with him. One of them said he was the supercargo of the sloop; and he called me one side, and offered me one thousand dollars if I would persuade Major Miller to ransom the sloop; but I advised Major Miller not to ransom the sloop. The sloop went down the bay off against Lincolnville, and there stopped. Major Miller, myself, and the supercargo of the sloop went down to Lincolnville by land, and the sloop was waiting there. While we were there we fell in with two gentlemen, Major Philip Ulmer and John Wilson. I heard the supercargo, who said his name was McWaters, offer Ulmer and Wilson each one thousand dollars if they would advise Major Miller to give up the sloop. Soon after this, Major Miller and the supercargo went on board the sloop, and proceeded for Camden. I understood said sloop was the English sloop Mary.

DAVID ALDEN.

STATE OF MAINE, }
 Waldo. } ss.

Personally appeared the above named David Alden, and made oath that the foregoing deposition, by him subscribed, is true. Before me,

JOSEPH MILLER,

Justice of the Peace.

NOVEMBER 23, 1837.

STATE OF MAINE, }
 Waldo. } ss.

I, Nathaniel M. Lowney, clerk of the judicial courts for the county of Waldo, certify that Joseph Miller is a magistrate in and for said county, and that the foregoing signature, purporting to be his, is genuine. I further certify, that the within named David Alden is well known to me; that he is a man of truth, and that his declarations on oath are entitled to credit.

In testimony whereof, I have hereunto affixed the seal of the supreme [L. S.] judicial court of said State, and subscribed my name, this 24th day of November, A. D. 1837.

N. M. LOWNEY,

Clerk of the courts for said county.

No. 2.

I, Charles Thomas, of Lincolnville, State of Maine, testify and say: That some time in the month of October, in the year 1814, Major Noah Miller, of Northport, came to me, and wished to hire a boat which I owned, for the purpose of cruising in Penobscot bay, in order to intercept and capture such English vessels as might be bound to Castine with supplies for the British troops, who were then in possession of Castine. I declined hiring my boat to him unless I could go with the boat. Major Miller said he wanted to hire men to go with him, and he would hire me. Major Miller said he would give me two dollars per day for my services, and one dollar per day for the use of the boat. I agreed to go with him for that sum. I accordingly took my boat and went a cruising with Major Miller a number of days in Belfast and Penobscot bays. Not falling in with any English vessels, after cruising a number of days, I returned home to Lincolnville, and left my boat in the charge of Major Miller, who was the captain of our crew. In a few days after I returned home, Major Miller took my boat and went out in the bay off against Northport, and captured an English sloop, bound to Castine, with supplies for the troops, &c. After Major Miller captured the sloop, he returned my boat to me, and paid me for the use of it, and also for my services. I always thought that Major Miller acted as a private citizen in all his priva-

teering expeditions against the British during the war, and that he acted in that capacity when he captured the English sloop Mary. I never heard a word said about Major Miller being a revenue officer at that time.

CHARLES THOMAS.

STATE OF MAINE, }
Waldo county } ss.

Personally appeared before me the above named Charles Thomas, and made oath that the foregoing deposition, by him subscribed, is true. I further certify, that I am personally acquainted with the said Charles Thomas, and that his declarations, under oath, are entitled to credit.

JOSEPH MILLER,
Justice of the Peace.

DECEMBER 9, 1837.

STATE OF MAINE, }
Waldo county. } ss.

I, Nathaniel M. Lowney, clerk of the judicial courts for said county, certify that Joseph Miller is a magistrate for said county, and that the foregoing signature, purporting to be his, is genuine.

In testimony whereof, I have hereunto subscribed my name, and [L. s.] affixed the seal of the supreme judicial court of said State, this 15th day of December, in the year of our Lord 1837.

N. M. LOWNEY.
Clerk of the courts for said county.

No. 3.

I, Alfred Johnson, of Belfast, Maine, of lawful age, testify and say: That I resided in Belfast aforesaid during the late war between the United States and Great Britain, and was well acquainted with Major Noah Miller, of Northport, an adjoining town. Major Miller was a very active officer of the militia, and signalized himself as an efficient partizan and a vigilant observer of the movements of the enemy in our vicinity; and it is my opinion that no one person in this quarter was oftener mentioned as a brave and useful friend of his country during that war. About one year, according to my best recollection, he was in the actual service of the United States as a captain of volunteers; and after the expiration of this service, it was understood—and I have no reason to doubt it—that he was in the revenue department of the government—in what capacity, or whether officially or as a volunteer, I cannot say—and assisted to prevent an illicit inter-

course with the enemy. He received a wound in a personal rencounter growing out of his said employment. During the war, he made a capture of a valuable vessel and cargo, attempting to introduce goods of the enemy into this country. And in doing this, it was at the time the general opinion that the said capture was made by him as a private citizen, at his own risk, responsibility, and expense.

ALFRED JOHNSON.

STATE OF MAINE, }
 Waldo. } ss.

Personally appeared the above named Alfred Johnson, and made oath to the foregoing deposition, as truth. Before me.

JOSEPH MILLER,
Justice of the Peace.

NOVEMBER 24, 1837.

STATE OF MAINE, }
 Waldo county. } ss.

I, Nathaniel M. Lowney, clerk of the courts for said county, certify that Joseph Miller is a magistrate for said county of Waldo, and that the foregoing signature, purporting to be his, is genuine. I further certify, that the within named Alfred Johnson is well known to me; that he is judge of the court of probate for said county, and that his declarations, on oath, are entitled to credit.

In testimony whereof, I have hereunto affixed the seal of the supreme judicial court of said State, and subscribed my name, this 24th [L. s.] day of November, in the year of our Lord 1837

N. M. LOWNEY,
Clerk of the courts for said county.

No. 4.

I, William P. Preble, of Portland, in the State of Maine, depose and say: That in the month of November, A. D. 1814, Josiah Hook, collector of customs for the district of Penobscot, reported to me, at that time attorney of the United States for Maine district, the sloop Mary and cargo, as being then in his possession and custody, to the end that said vessel and cargo might be proceeded against, condemned and confiscated to the United States. I accordingly drew a libel, and filed the same in the district court, setting forth the facts as reported to me by said Hook, the collector; and the property was afterwards, in due time, condemned and confiscated to the United States. The place where the Mary was captured and seized it appeared was in Mr. Hook's district, and within the waters of the United States; and

the property, by the then existing statutes, was liable to seizure and forfeiture, without regard to the fact of its being enemy's property. Hence, as well as I can remember, the collector claimed a right to take the property into his possession, and to receive and account with the government for the proceeds.

I further depose and say: That it was well understood and notorious that said Mary and cargo were, in fact, captured and seized by Major Noah Miller, who, having discovered the vessel from the shore, put off in a boat, with a small crew, and took possession of her, and brought her into Camden; and that the capture was wholly due to the activity and enterprise of said Miller and his assistants.

I further depose: That I well remember it was understood at that time that said Miller met with a good deal of difficulty in securing the property after its capture, and that it was wholly owing to his active exertions, aided by his boatmen, that the property was removed to a place of safety, and that, if it had not been so removed, it would have been rescued by the enemy's armed forces then in the vicinity. I have since understood, and now fully believe, that said Miller, in making said capture, and securing said property, acted solely from his own promptings, and in no respect under the authority and instructions of Mr. Hook, the collector.

And I further depose: That I well remember said Miller was in those days distinguished for his zeal and activity (after I knew him) in carrying on a partizan warfare against the enemy, and the contraband trade carried on with them in that quarter, while the British forces were in possession of Castine.

WILLIAM P. PREBLE.

CUMBERLAND, ss.

Then personally appeared William Pitt Preble, and made oath that the foregoing statement, by him subscribed, is true, according to the best of his knowledge, recollection, and belief. Before me,

JOHN L. MEGQUIER,

Justice of the Peace.

AUGUST 18, 1837.

No. 5.

Extract from the testimony of Philip Ulmer, taken in 1814, to be used, as is understood, in court, in the case of the Mary.

Answer to the 3d interrogatory: The sloop Mary was taken in Penobscot bay, as I was informed, by Captain Miller, being English property. About two hours after her capture the sloop was brought into Camden. Sailed under British colors. No resistance made. Seized by the revenue officers.

Answer to the 5th interrogatory: The sloop is about sixty tons.

There were six men on board, officer included, and a lady, the captain's wife. They all appeared to be English or Irish. The captain said he had lived in Halifax about ten years. I do not know when or where they came on board.

Answer to the 32d interrogatory : I have stated all I know, except the conversation I had with Mr. McWaters, relative to a ransom, and the captain. After McWaters had offered Captain Miller £10,000 to ransom the vessel, and me £1,000 if I would not interfere to prevent the ransom, the captain then told me the property was all British ; that they were but four days from Halifax, and that they were towed all the passage by the sloop-of-war Pelter.

No. 6.

WASHINGTON, June 24, 1842.

GENTLEMEN : Having been requested, in behalf of Major Noah Miller, to communicate to your committee certain facts in relation to a capture made by him at a late period of the last war with Great Britain, which is the foundation of a claim on his part now under your consideration, I have the honor to state that I was the person who then held the office of district attorney for Maine. Immediately after Miller had made the capture, he found himself troubled by the pretensions of certain persons then in the military service, who seemed to have claims to a share of the prize, from the fact that the troops on shore were in sight. Major Miller was ignorant how to proceed with the property, or what to do with it. It was in imminent danger of recapture, if not removed, and he had no means of removing it, besides the risk of incurring a forfeiture. Under these circumstances, he applied for aid to the collector of the district. The collector accordingly took charge of the property, and had it removed, secured, and condemned. After condemnation, the proceeds were paid over to the collector, to be by him disposed of and accounted for according to law. I had understood that Miller was an officer of the customs at the time of the capture, and the date of his commission as inspector indicated the fact to be so. I learned afterwards that the commission was purposely ante-dated ; and the fact was undoubtedly so. The act of the capture was an act of Miller's own devising and enterprise, unprompted by any one, and unaided by any one except his boat's crew. Miller continued afterwards in the United States service as inspector, and until our troubles of that period ceased, and was very active, vigilant, and enterprising ; and no man did better service than he. He was the terror of smugglers and traders with the enemy. More than once he barely escaped with his life, so that it became necessary to caution him to be less venturesome and daring.

With great respect, gentlemen, your obedient servant,

WILLIAM P. PREBLE.

The COMMITTEE to whom is committed
the petition of Noah Miller.

No. 7.

I, Samuel A. Whitney, of Lincolnville, in the county of Waldo and State of Maine, on oath, do say: That in the fall of 1814, while the British forces were at Castine, Major Noah Miller came on shore from a sloop then lying off this place, and informed me and others that he and others had taken possession of the aforementioned vessel; that she was an English vessel, bound from St. John's to Castine, laden with English goods; that they took her in Penobscot bay within a few miles of Castine, and wanted to get Major Philip Ulmer to go with him on board, to take charge of her, to take her into some place of safety, (Major Ulmer being a custom-house officer, seaman, and pilot;) that the said Ulmer did go on board with said Miller, and took said vessel into the harbor of Camden, and immediately landed the goods, and caused them to be transported overland to the town of Warren, for safety; that the next day an English frigate went from Castine, anchored off Camden, and sent in a demand for the goods; and Camden had to give up hostages, to prevent damage being done to the town, which were carried off.

I further say, that Christina, wife of Paul H. Stevens, esq., Susan, wife of Samuel Buckmer, and Grace, wife of Job White, are the daughters and heirs-at-law of the aforesaid Philip Ulmer, deceased.

SAMUEL A. WHITNEY.

WALDO, ss.

Then personally appeared the above named Samuel A. Whitney, and made oath to the truth of the above deposition, by him subscribed. Before me.

JACOB S. ADAMS, J. P.

DECEMBER 3, 1838.

No. 8.

THOMASTON, MAINE, *December 3, 1841.*

MY DEAR SIR: In behalf of a very worthy but unfortunate man, allow me to call your attention to the claim of *Noah Miller*. It is desirable that it should be *early* reported, in order that it may stand a chance of going to the other House in season to obtain the action of that body. It has passed the Senate three or four times, having received the unanimous sanction of the Committee on Commerce from the first examination of the subject in 1838. Let me refer you to Governor Davis' report on the subject, with accompanying documents—being Doc. No. 204, 2d session 25th Congress. The late chairman, Mr. King, has advocated it. I presume it will find no opposition.

You will perceive that the bill which passed the two last sessions appropriates \$7,500 for Miller, and \$2,500 for others, instead of the \$10,000 for Miller alone. This was a sort of compromise, assented to by Miller and others, to avoid collision and delay, though, in point of fact,

Miller has the sole claim. I hope no modification more unfavorable to Major Miller will be consented to on any account. Governor Davis, just before he resigned his seat, said to me that he felt deep interest in this claim of Major Miller, and regretted that any compromise (referred to above) had been assented to. He said that Miller was shown to be a very deserving man, and ought not to divide with any one. He yielded to it only because Miller himself assented; and that, he thought, was hardly a sufficient reason. He spoke with some feeling about it.

I will not trouble you further now than to ask the favor of your making as *early* a report of a bill as practicable, if the committee see no objections. If there should be anything that may require explanation before the Senate act upon it, I will thank you to apprise me of it.

Wishing you, my dear sir, a pleasant, useful, and *harmonious* session, I remain, very respectfully and faithfully, your obedient servant,
JOHN RUGGLES.

Hon. JABEZ W. HUNTINGTON,
Senator, United States.

P. S. The bill referred to has twice or three times received the *favorable* consideration of the House committee, but it has never been reached by the House.

No. 9.

I, John Studley, of Lincolnville, in the county of Waldo and State of Maine, of lawful age, do testify and say: That, in the fall of 1814, the British sloop Mary was captured by Noah Miller and others, and hove to in Penobscot bay, near where I lived, about seven miles from Camden.—Miller came on shore, and got Major Philip Ulmer to go on board and take charge of her and carry her into Camden, he being a revenue officer; which was effected the same day, and her cargo discharged.

And I further say, Christina Stevens, Susan Buckmer, and Grace White, are children and lawful heirs of the said Philip Ulmer.

JOHN STUDLEY.

WALDO, ss:

Then the above named deponent personally, appeared and made oath to the foregoing deposition, by him subscribed, to be true. Before me,

DAVID MCKOY, J. P.

NOVEMBER 30, 1818.

No. 10

I, Jacob S. Adams, of lawful age, do testify and say: That, in the fall of 1814, I resided at Lincolnville, in the county of Waldo and

State of Maine. I was at the shore at the time, and saw Major Philip Ulmer, together with Major Noah Miller, go on board the British sloop Mary, then lying in the bay. The report was, that they were going with him to Camden. I then went immediately to Camden by land, and met the sloop there. Major Philip Ulmer was on board said sloop, and appeared to have the command of her, and appeared to take an active part and be principal in unlading her and securing the goods.

And I further say, that Christina Stevens, Susan Buckmer, and Grace White, are children and lawful heirs of said Major Philip Ulmer, deceased.

JACOB S. ADAMS.

WALDÓ, ss.

Then the above named deponent personally appeared, and made oath to the foregoing deposition, by him subscribed, to be true.

DAVID MCKOY, J. P.

DECEMBER 1, 1838.

No. 11.

LINCOLNVILLE, *December 5, 1843.*

DEAR SIR; The circumstances concerning the claims of the heirs of Major Philip Ulmer, late of Lincolnville, I will briefly relate: In the fall of 1814, Noah Miller, with three or four others, boarded a British sloop, with a valuable cargo on board, in Penobscot bay, about five or six miles from the British fleet, then lying at Castine. After securing the crew, Miller left the prize in charge of his men, and went on shore to procure the assistance of Major Ulmer, then a shipmaster and pilot, who immediately went on board, took charge of the prize, and, at the imminent risk of being retaken by the British, carried her into Camden, where the cargo was taken out, sent to Portland, and sold, government taking a large proportion, (which has since been proved does not belong to it,) the rest being divided among the crew, Major Ulmer receiving an equal share for his important services; and, sir, what we petition for is, that his heirs may receive a share of that which was awarded to government.

With great esteem, I am yours, &c.,

PAUL H. STEVENS.

Hon. GEORGE EVANS.

P. S.—Should you, sir, use your influence with the other members, you will secure our warmest gratitude.

P. H. S.

No. 12.

I hereby certify, that I have been personally acquainted with Major Noah Miller, of Lincolnville, in the State of Maine, since June, 1821.

At the time of my first acquaintance he was affected with paralysis of the inferior extremities, to such a degree as to render them entirely useless. His general health was very much impaired, and his difficulties gradually increasing for ten or twelve years, during a considerable part of which time he was perfectly helpless, and his life despaired of. He has recovered so far as to be able, by the assistance of crutches, to support the weight of his body and move a short distance; and his general health has within a year or two somewhat improved. He is still, however, unable to walk without assistance. During his protracted illness, I have been frequently consulted, affording ample opportunity to learn his real condition. When I first saw him, he informed me that he had been in his present condition for some five or six years, it having introduced itself instantaneously. He shows a scar in his right hand, from a wound which has nearly deprived him of its use, which (I have been informed by the surgeon who attended it) was received during the last war, while endeavoring to prevent a man from conveying supplies to the enemy at Castine.

J. P. ALDEN, *M. D.*

STATE OF MAINE, *Waldo, ss.*

Personally appeared the above named J. P. Alden, and made oath to the truth of the foregoing deposition, by him subscribed. Before me.

JOSEPH MILLER,
Justice of the Peace.

NOVEMBER 24, 1837.

STATE OF MAINE, *Waldo, ss.*

I, Nathaniel M. Lowney, clerk of the courts for said county, certify that Joseph Miller is a magistrate for said county, and that the foregoing signature, purporting to be his, is genuine. I further certify that the within named J. P. Alden is well known to me; that he is a man of truth, and that his declarations on oath are entitled to credit.

In testimony whereof I have hereunto affixed the seal of the [L. S.] supreme judicial court of said State, and subscribed my name, this twenty-fourth day of November, A. D. 1837.

N. M. LOWNEY,
Clerk of the courts of said county.

No. 13.

UNITED STATES OF AMERICA.

DISTRICT OF MAINE, *ss.*

To the Hon. David Sewall, Esq., Judge of the District Court of the United States in and for the Maine District.

Be it remembered, that William P. Preble, attorney for the United States in and for Maine district, in his proper person, comes before

the said judge, and as well in behalf of said States as of Josiah Hook, esq., collector of the district of Penobscot, and of all others whom it may concern, libels, propounds, and gives the said judge to understand and be informed, that since the declaration of war between the United States of America and the United Kingdom of Great Britain and Ireland, and during the continuance of the same, (to wit, on the first day of November instant,) the said Hook, by virtue of his commission as collector aforesaid, did, in and with a revenue boat of said States, and with the assistance of Noah Miller, an inspector of the customs for said district of Penobscot, acting under and by the order of said Hook, subdue, seize, capture, and take the vessel or sloop called the *Mary*, whereof Benjamin Darling or Dalling was master, and her cargo on board said vessel, and afterwards, on the same day, did bring the said vessel and cargo into the port of Camden, in said district of Maine, where she now lies, for adjudication. And the said attorney further propounds and says, that, at the time of said capture and seizure, the said vessel, her tackle, apparel, and furniture, and her cargo, did belong to the King of said United Kingdom, or to some subject or subjects thereof, and as such, or otherwise, liable to capture in manner aforesaid, and to be condemned or confiscated to said States; all which is public and notorious, of which due proof being made, the said vessel, her tackle, apparel, and furniture, and her cargo, ought to be decreed and adjudged forfeit to the use of said States.

Wherefore, the said attorney prays the advisement of this court here in the premises, and that due process and monition may be had in this behalf, according to the course of admiralty proceedings in such cases; and that the said vessel, her tackle, apparel and furniture, and her cargo aforesaid, may, by the definitive sentence of this court, be adjudged and decreed forfeit and confiscated to said States, and the proceeds thereof be disposed of according to law.

Dated this 17th day of November, A. D., 1814.

Filed this 17th November, 1814.

W. P. PREBLE,

U. S. Attorney, Maine District, and proctor to J. Hook.

UNITED STATES, MAINE DISTRICT, ss.

DISTRICT COURT, CLERK'S OFFICE,

August 17, 1837.

In testimony that the foregoing is truly copied from the original on file in this office, I have hereto set my hand, and affixed the
[L. s.] seal of the district court, the day and year above written.

JOHN MUSSEY,

Clerk United States Courts.

No. 14.

DISTRICT OF MAINE, ss.

The President of the United States of America to the Marshal of our District of Maine, or his deputy, greeting:

Whereas, by the sentence of our judge of our district court, begun and holden at Portland, within and for our district of Maine, on the first Tuesday of December, 1814, a decree of condemnation was obtained by the United States against the sloop Mary and cargo, except three trunks of goods and articles, marked $\triangle x$ No. 378, No.

379, and No. 380, captured and seized by the collector of Penobscot, as to us appears of record, whereof execution remains to be done:

We command you, therefore, that you cause the said sloop Mary and cargo, except as aforesaid, to be sold at public auction to the highest bidder, at Portland, within our said district, after first giving public notice of the time and place of such sale, as our law directs. And the moneys arising from said sale, after deducting twelve hundred and sixty-four dollars fifty-eight cents, the costs of prosecution, and one dollar for this precept, together with your own proper fees and charges, you will dispose of as follows, viz: one moiety to be paid into the treasury of the United States, and the other moiety to the collector of the district of Penobscot, for the uses prescribed by our law in such cases made and provided; and make return of this writ, with your doings herein, into our said court, to be holden at Wiscasset the last Tuesday of February next.

Witness David Sewell, esq., at Portland, the fifteenth day of December, in the year of our Lord one thousand eight hundred and fourteen.

[L. s.]

H. SEWALL, *Clerk*.

N. B. The return of the doings on this writ is annexed by seals.

Attest:

HY. THORNTON, *Marshal*.

MAINE, ss.

Pursuant to the annexed warrant of sale, I advertised the time and place of sale of the sloop Mary and cargo, according to law, in the Portland, Boston, and New York newspapers, and on the day of sale advertised, viz: January 5, sold at public auction to the highest bidders that part of the cargo advertised for sale in Portland (the other part and the said sloop Mary being sold by deputy Tebbets, as per his account annexed) to sundry persons, as per account annexed; the amount of, as per said account, being sixty-five thousand nine hundred and forty-three dollars and fifty-two cents, viz: \$65,943 52

From which I deduct the following costs and charges, viz:

Court bill of costs, as taxed by the court.....	\$1,265 58
Advertising in Portland, \$5; extra advertising, New York, &c., \$20.....	25 00

Service precept, \$2; commission on \$500, at 2½ per cent., \$12 50; commission on \$65,443 52, at 1½, \$818 04.....	\$832 54	
Travel to return precept, \$3; extra incidental charges, \$35	38 00	
To cost and charges paid Collector Hook for transportation of goods from Warren and Newcastle and Portland, being a distance of eighty miles; also, for storage, and guarding goods, labor, preparing invoice, printing catalogues, &c., for sale, as per his account.....	952 54	\$3,113 66
		62,829 86

Amounting to three thousand one hundred and thirteen dollars and sixty-six cents, which deducted from gross amount of sales, leaves a balance of sixty-two thousand eight hundred and twenty-nine dollars and eighty-six cents, which balance I have paid over to Josiah Hook, esq., collector, as per his receipt below, to be disposed of according to law.

HY. THORNTON,
Marshal of Maine.

JANUARY 14, 1815.

PORTLAND, *January 14, 1815.*

Received of Henry Thornton, marshal of Maine, the sum of sixty-two thousand eight hundred and twenty-nine dollars and eighty-six cents, being the above balance of \$62,829 86, to be disposed of according to law, and have signed duplicates. I have also received twelve hundred dollars, made up in court bill of costs, and nine hundred and fifty-two dollars and fifty-four cents, costs of transporting goods from Warren and Newcastle, and other costs and charges, as per my account, and received twenty-four dollars commissioner's fees.

JOSIAH HOOK, *Collector.*

UNITED STATES, MAINE DISTRICT, *ss.*

DISTRICT CLERK'S OFFICE, *August 17, 1837.*

In testimony that the foregoing is truly copied from the original on file in this office, I have hereto set my hand and affixed the seal of the district court, the day and year above written.


JOHN MUSSEY,
Clerk U. S. Courts.

No. 15.

DISTRICT OF MAINE, ss.

The President of the United States of America to the Marshal of our District of Maine, or his deputy, greeting:

Whereas, by the sentence of our judge of our district court, begun and holden at Wicasset, within and for our district of Maine, on the last Tuesday of February, 1815, a decree of condemnation was obtained

by the United States against three trunks of goods marked  and

numbered 378, 379, and 380, (part of the cargo of the sloop Mary, condemned at the last December term of our said court,) seized by the collector of Penobscot, and libelled as enemy's property, and decreed forfeited to said United States—one moiety to their use and the other moiety to the said collector, as to us appears of record, whereof execution remains to be done:

We command you, therefore, that you cause the said three trunks, with their contents, to be sold at public auction, to the highest bidder, at Portland, within our said district, after first giving public notice of the time and place of such sale, as our law directs. And the moneys arising from said sale, after deducting fifty-three dollars and fifty-eight cents, the costs of prosecution, and one dollar for this precept, together with your own proper fees and charges, you will dispose of as follows, viz: one moiety to be paid into the treasury of the United States, and the other moiety to the collector of the district of Penobscot, for the uses prescribed by our law in such cases made and provided; and make return of this writ, with your doings herein, into our said court, to be holden at Portland the last Tuesday of May next.

Witness David Sewall, esq., at Portland, the tenth day of March, in the year of our Lord one thousand eight hundred and fifteen.

H. SEWALL, *Clerk.*

[L. s.]

MAINE, ss.

Pursuant to this warrant, I advertised the time and place of sale of the within named trunks of goods in a public newspaper printed in Portland, according to law, and on the 12th instant sold the same at public auction to the highest bidder, according to an account hereto annexed, and the amount of which sales was..... \$2,225 33

Costs of court.....	\$54 58	
Advertising.....	5 00	
Service.....	2 00	
Commission.....	34 06	
Extra charges and pay for auction room and labor, including precept.....	5 00	
	<hr/>	100 64
		<hr/>
		2,124 69
		<hr/>

Which sum of twenty-one hundred and twenty-four dollars sixty-nine cents I have paid to Collector Hook, as per his receipt below.

HY. THORNTON, *Marshal*.

APRIL 15, 1815.

APRIL 15, 1815.

Received of H. Thornton, marshal of Maine, twenty-one hundred and twenty-four dollars sixty-nine cents, in full for the net amount of the sales arising from the within named goods, to be disposed of according to law ; also, received twenty-eight dollars on the within bill of costs, as storage and for depositions.

JOSIAH HOOK, *Collector*.

UNITED STATES, MAINE DISTRICT, *ss*.

DISTRICT CLERK'S OFFICE,
August 17, 1837.

In testimony that the foregoing is truly copied from the original on file in this office, I have hereto set my hand and affixed the [L. S.] seal of the district court, the day and year above written.

JOHN MUSSEY,
Clerk United States Courts.

No. 16.

TREASURY DEPARTMENT,
Register's Office, February 7, 1838.

I do hereby certify that Josiah Hook, late collector of Penobscot, has accounted for the forfeiture in the case of the sloop Mary and cargo, and that the United States' proportion of said forfeiture amounted to thirty-two thousand one hundred and eighty-eight dollars and thirty-two cents, as appears from his accounts for the first quarter of the year 1815, filed in this office.

T. L. SMITH, *Register*.

IN THE HOUSE OF REPRESENTATIVES, *February 25, 1845.*

Mr. RAMSEY, from the Committee of Claims, made the following report :

The Committee of Claims, to whom was referred the petition of Mrs. Frances Swann and others, report :

That the claim appears to be unsupported by any testimony of a nature to constitute a legal demand upon the treasury. If the claim had been fully proved—which is, in a word, that the British had de-

stroyed (in the last war) five hogsheads of tobacco belonging to the petitioner—its payment would be at war with the provisions of the acts of 1816 and 1825, and with the precedents established at various times by Congress. Congress has steadily refused to enlarge the provisions of those acts, so as to take in claims for indemnity *for destruction of personal property by a public enemy*. The petition is appended hereto, as is also the letter of the Third Auditor, dated January 1, 1845, as they state the case fully, and establish the identity of the principles governing this case with those involved in the case of Charles J. Catlett. The tobacco of both was stored in the same warehouses, and was lost or destroyed at the same time.

On the 2d of July, 1836, a law was passed authorizing the accounting officers of the treasury to adjust and settle the claim of Charles J. Catlett upon the principles of the acts of Congress of the 9th of April, 1816, and 3d of March, 1817. Under this law, the Third Auditor of the Treasury examined the claim of Mr. Catlett, and on the 30th December, 1836, made an elaborate and able report to the Second Comptroller of the Treasury, in which, in the opinion of this committee, he clearly demonstrated that the claim, in no material point, came within the principles of the acts of 1816 and 1817. This report was examined by the Comptroller in January, 1837, and concurred in by him. The report and the concurrence are annexed hereto.

Mr. Catlett, anxious to obtain a compensation for his tobacco, and not satisfied with the decision of the Treasury Department, continued to agitate the subject; and the Senate accordingly directed all of his papers and the treasury decision to be laid before it. This was done on the 29th of January, 1839, and they were referred to the Committee of Claims; but in a few days thereafter, so clearly is it to be perceived that the case cannot be brought within the principles of the acts of 1816 and 1817, on motion of the chairman of that committee, it was ordered that the Committee of Claims be discharged from the further consideration of the petition of Charles J. Catlett.

Notwithstanding these decisions of the accounting officers of the treasury, and of the Senate of the United States, some years after, viz: towards the close of the year 1841, the President (Mr. Tyler) ordered a statement of the value of the tobacco to be made out and reported to him. This was done by the Third Auditor on the 20th September, 1841. The order of the President; the reply of the Auditor; the partial allowance of the claim by the President himself, September 21, 1841; the order of the President to the accounting officers of the treasury of the 23d September, 1841, to re-examine the claim of Mr. Catlett, and if they could not allow it, to report specially to him their reasons for disallowance; the reply of the Third Auditor to the President, directed to the Comptroller, against the claim, under date of the 28th September, 1841; and, the final allowance of the claim of Mr. Catlett by the accounting officers on the 29th September, 1841, (notwithstanding their conviction of its illegality,) upon the opinion of the Attorney General, given "by direction of the President of the United States," are added to and made a part of this report; together with an abstract of the laws of 1816 and of 1817,

showing the utter illegality of the allowance upon the principles embodied in said laws.

Your committee have dwelt upon this case of Catlett, because it is entirely similar to the one presented by the petitioner, and has been relied on in support of the claim under consideration; and the committee freely admit, that if Charles J. Catlett had a valid claim upon the treasury for remuneration for his losses, so has Frances Swann. Of this there can be no reasonable doubt; for the proof of loss is as good, and the loss was sustained at the same times and places, as in the case of Catlett. To allow one, therefore, and disallow the other, would be inexcusable partiality, unless the payment of the first can be shown to have been improper, impolitic, or unjust.

The committee are fully of the opinion, that a careful perusal of the documents which they have arranged, and submit herewith, will carry conviction to a large majority of the minds that will investigate them, of the inability of Catlett, or of Swann, to bring their claims within the principles established by the acts of 1816 and of 1817; the interference of the President, reversing the decision of the accounting officers of the treasury, supported by naked authority, and by no reasoning, nor by any precedents, is not entitled to weigh against the plain facts and logical arguments so distinctly set forth by the Third Auditor of the Treasury, in the bold and courageous discharge of his duty.

In the importance of the principle involved—going, indeed, to throw open the door to the payment of the innumerable claims for losses of personal property by a foreign enemy—a door that was carefully closed in 1816, when thousands of distressed claimants (now in their tombs) were besieging the Capitol; in the importance of the present claim; and in the high importance of sustaining accounting officers who have at once the honesty and the courage to do their duty when they have direct reason to know that the allowance of an account by them deemed inadmissible would be agreeable to the executive, will be found, the committee venture to hope, a satisfactory reason for the submission of a report so extensive as it will be found to be.

The committee offer the following resolution, and recommend its adoption by the House:

Resolved, That the petitioner is not entitled to relief.

No. 1.

To the honorable the Senate and House of Representatives in Congress assembled:

Frances Swann, a citizen of the District of Columbia, and widow and administratrix of the late William T. Swann, and the heirs of the late William T. Swann, respectfully submit their following memorial and petition.

During the late war between the United States and Great Britain, the late William T. Swann lost five hogsheads of tobacco, in consequence of the military operations of the period, and under circumstances entitling him to indemnification from the public.

The tobacco belonging to the late William T. Swann, amounting to five hogsheads, was partly destroyed and partly taken away by the enemy, at various public warehouses on the Patuxent river, in consequence of the military occupation of said warehouses by the troops of the United States, and other events of the war; a part of said tobacco being at Magruder's warehouse, and the other part at Nottingham warehouse, on the Patuxent river, in the State of Maryland, at the time it was thus taken away and destroyed.

In support of this statement your petitioners refer your honorable bodies to a certain parcel of tobacco notes, proving, under the laws of Maryland, the loss of tobacco by the late William T. Swann to the amount as stated by the said notes; to all the papers, affidavits, depositions, letters, statements, &c., in the case of Charles J. Catlett, which was an application similar to this, made to your honorable bodies in the year 1836, and for the loss of tobacco at the same warehouses on the Patuxent river, at the same time, and under similar circumstances.

And your petitioners pray that, as the case of Charles J. Catlett is in all respects the same with this, the said papers, affidavits, depositions, letters, statements, &c., be adopted as proofs in this case, in addition to the evidence that is, and will be, adduced by your petitioners.

The tobacco herein referred to by your petitioners cost the late W. T. Swann a considerable sum of money, and, after the war, tobacco greatly increased in value; and they therefore respectfully suggest that, in fixing the compensation Congress may be pleased to award to them as aforesaid, the subsequent value be adopted as the rule for ascertaining the amount of their loss; and they beg leave respectfully to refer your honorable bodies to the proofs in Catlett's case, as to the price of tobacco at that time.

Your petitioners respectfully pray that your honorable bodies will grant your petitioners such compensation as to your honorable bodies may seem just and right, and as is suggested by the laws in such cases made and provided.

FRANCES SWANN, *and others.*

No. 2.

TREASURY DEPARTMENT,
Third Auditor's Office, January 1, 1845.

SIR: I have the honor to acknowledge the receipt of your letter of the 31st ultimo, enclosing the petition of Mrs. Frances Swann, widow and administratrix of the late William T. Swann, deceased, and the heirs of the deceased, with a note from her to you—the object of these

papers appearing to be to obtain payment for five hogsheads of tobacco expressed to have been partly destroyed, and partly taken away by the enemy, from Magruder's warehouse and Nottingham warehouse, on the Patuxent river, in consequence of the military occupation of those warehouses by the troops of the United States, and other events of the war; and to have, in order thereto, the proofs in the case of Mr. Charles J. Catlett before the committee. Your letter expresses it to be the desire of the committee to obtain the papers alluded to in the petition, and all the information within my power calculated to shed light upon the merits or demerits of the claim. No claim in respect of the tobacco in question appears to have been ever presented for allowance at this office. For Mr. Catlett's relief a special law was passed; and the material papers in his case, and wherein a full description of the testimony in its support appears, will be found to have been printed with the reports of the Committee on Public Expenditures of the House of Representatives, made on the 2d and 3d sessions of the 27th Congress, and numbered 1,103 and 211. If the committee shall, notwithstanding, desire to see all the papers themselves, the same shall be sent to you, on your signifying such a desire.

Not a word appears in any of them as to any tobacco described as belonging to Mr. Swann.

The petition and note sent by you are herewith returned.

With great respect, your most obedient servant,

PETER HAGNER, *Auditor.*

Hon. JOSEPH VANCE,

Chairman Committee of Claims, House of Reps.

No. 3.

Report of the Third Auditor on the claim under the act for the relief of Charles J. Catlett.

TREASURY DEPARTMENT,
Third Auditor's Office, December 30, 1836.

The claim he has preferred is as follows:

To loss of tobacco by British spoliation during the last war, and for which Congress has ordered restitution, viz.

149	hogsheads at Nottingham;
115	do. at Magruder's;
4	do. at Cedar Point;

Total 268 hogsheads tobacco, at \$96 90 $\frac{2}{3}$ —25,970 27.

To interest from 17th November, 1815, at which time, and at the above rate per hogshead, he sold the remnant and refuse of his tobacco to Phineas Janney, of Alexandria.

At the 2d session of the 23d Congress (January 13, 1835) a bill for

his relief appears to have been reported from the Committee on Finance of the Senate, accompanied by a report, which was ordered to be printed. After mentioning therein that his losses appeared to have been very severe, by reason of the military operations of the enemy during the late war with Great Britain, and that he had large quantities of flour and tobacco in store at Alexandria, and considerable quantities of tobacco in the Maryland warehouses situated at various points on the waters making into the Chesapeake bay, all of which were burnt, captured, or destroyed by the enemy, the committee proceeded to observe that, in regard to the chief bulk of his losses, it could perceive no safe principle upon which it could rest in recommending an allowance; that the utmost extent to which the government can with safety go, in remunerating losses to individuals who have been subjected to injury by the fortunes of war, is to protect them *against its own act and its consequences*. Thus, if a house be occupied by the troops of the country for military operations, it thereby is placed on the footing of any other military position, and may be justifiably destroyed by the enemy; so, if private property is used to assist in the defence of the country, or in the prosecution of offensive military operations, it becomes as liable to be destroyed by the enemy as any part of the *matériel* of the army; and, if destroyed, the government is fairly answerable for its value. That, keeping this principle in view, the committee could find no sufficient authority to recommend the payment of by far the largest portion of the claim set up by the petitioner, but that there were portions of the claim which the committee consider as falling under the principle thus laid down. That the petitioner had in store at Magruder's warehouse, on the Patuxent river, 115 hogsheads of tobacco, which, along with the warehouse, appear to have been burnt by the British in June, 1814; that he had also a small number of hogsheads in store at Cedar point warehouse, which were destroyed in the same way; that the proof was satisfactory to show that very smart conflicts between detachments of the enemy and Maryland troops occurred at both places; and that at Nottingham warehouse, seven miles distant from Magruder's, where the petitioner had in store 149 hogsheads of tobacco, a breastwork was made of the tobacco for the defence of the American troops; that, while at Magruder's and Cedar point, the American troops found shelter under the warehouses, and from therein continued to fire on the enemy until their ammunition was expended. That it was also in proof that other warehouses, equally exposed, were left unburnt, in consequence, as was believed, of the absence of all military operations in their immediate neighborhood by the troops of the United States; that the destruction of the warehouses at Magruder's and Cedar point, with their contents, and the abduction of the tobacco from Nottingham, seemed fairly to be traceable to the principle laid down by the committee, and to that extent it reported a bill for his relief; that the committee had not been able to satisfy themselves as to the proper price which should be allowed for the tobacco thus destroyed and carried off; that, at the time of the destruction, the prices for tobacco were merely nominal, but, after the restoration of peace, the price became high; that it was fairly to be inferred that the

petitioner would have continued to hold it until the peace—say one year more—he being at the time a merchant of wealth and respectability, and, like others in the country, indulging in speculation in an article which time improved in quality, flavor, and price; and that, under all the circumstances, it had been deemed most advisable to submit the subject to an equitable decision on the part of the accounting officers, when the intentions of the petitioner could be better inquired into, and a more satisfactory result attained. The bill to which the report refers, authorized and directed the proper accounting officers of the Treasury Department to settle *and allow, upon just and equitable principles*, the claim of Charles J. Catlett, for tobacco which belonged to him at Magruder's warehouse, Cedar point warehouse, and Nottingham warehouse, all in the State of Maryland, and was lost, captured, or destroyed by the British or American troops, during the last war between the United States and Great Britain; and prescribed that the allowance should be carried to the credit of the said Charles J. Catlett on the books of the treasury.

On the 19th February, 1835, the bill appears to have been rejected, and on the following day a reconsideration of the vote was moved, and the motion laid on the table. No further action on it appears to have been had during the session.

At the last session of Congress, another bill for the relief of Charles J. Catlett, in precisely the same form as the one before noticed, was reported from the Committee of Finance of the Senate, unaccompanied by any report in relation to it. This bill appears to have been read a second time, and considered as in Committee of the Whole, on the 29th March, 1836, and to have been then, on motion, ordered to lie on the table, where it rested till the 24th June following, when the consideration of it as in Committee of the Whole is shown to have been resumed, and when it was amended, reported to the Senate, and the amendment concurred in, and in the amended form it afterwards became a law. The amendment consisted in substituting for the words "and allow upon just and equitable principles," these: "*upon the principles of the acts of Congress of the 9th of April, 1816, and 3d March, 1817.*" In acting on the claim, therefore, the accounting officers will have to be governed, not by the views of the committee on the principles laid down in their report, but by the principles of the acts referred to. So far as respects the first of those acts, the principles in question are contained in the 9th section thereof, and which provided that any person who, in the late war between the United States and Great Britain, sustained damage by the destruction of his or her house or building by the enemy, while the same was occupied as a military deposite under the authority of an officer or agent of the United States, should be allowed and paid the amount of such damage, provided it should appear that such occupation was the cause of the destruction. And the act of the 3d March, 1817, provided that the aforesaid 9th section should be construed to extend only to houses or other buildings occupied by an order of an officer or agent of the United States, as a place of deposite for military or naval stores, or as barracks for the military forces of the United States.

Part of the testimony adduced in support of the claim consists of two letters, dated 28th August, 1828, and 27th February, 1832, addressed to the claimant by George W. Biscoe, who appears to have been in service as a major of militia of the State of Maryland. The first of these letters is verified on oath, and in it the writer has thus expressed himself: "At your request for information in relation to the tobacco, your property, taken from the warehouses at Nottingham by the British, during the period of their invasion, I have to state that a part of your tobacco was used by my order, as commanding officer at Nottingham, for the purpose of erecting a breastwork for the defence of the place; and, with the exception of three or four hogsheads, I am confident, out of the sale I made to you of 105 hogsheads, that the remainder was carried away by the enemy. I also recollect that Benjamin Oden, esq., remarked that a part of the tobacco thus used was sold by him to you." The other letter contains a statement, which the writer represents to be made on honor, as a brigade commander of the militia of Maryland, and an officer holding a commission of surveyor and inspector of the revenue under the general government, and to be such as he can verify on oath, if necessary. This statement is as follows: "You request information on the subject of the defence of Magruder's warehouses, in June, 1814, by a detachment of militia acting under my orders. In reply, I have to state that the captain in command reported to me his rencounter with the enemy at that place. He stated that, on the near approach of the British barges (said to be) under the command of Commodore Barney and Colonel Malcomb, of marines, he posted his men behind the warehouses, situated within thirty yards of the shore; and that so soon as his fire of musketry could be deemed effectual, he commenced, and continued to do so for an hour or two, being under cover of the warehouses; finally his ammunition became expended, and he was compelled to retire. The enemy then landed and set fire to the warehouses, which were burnt. I am aware that you sustained considerable loss in tobacco there and elsewhere on the Patuxent river, from the circumstance of your having purchased of me more than one hundred hogsheads, which, with the exception of a few (say, to the best of my recollection, four or five) at the warehouses here, were either burnt at Magruder's warehouses at the period above stated, or were carried away by the enemy, on their retreat from the city of Washington to their shipping at this place. At one period I used the tobacco in the warehouses here for military purposes, a part of which I recollect was your property, having sold it to you."

This letter is denoted to have been written at Nottingham. Another portion of the evidence adduced is contained in depositions of Jesse Selby and James Baden, dated December 20, 1833, and February 20, 1835; the former of whom has testified that he was stationed at Magruder's warehouse, on the Patuxent river, in June, 1814, in a company of Maryland militia commanded by Captain Joshua Naylor; and that the said warehouse, he verily believed, was burnt in consequence of the said company being there, and the said warehouse affording protection, and being occupied by them; also, that Captain Naylor died in the year 1825. And Mr. Baden has testified that

General G. W. Biscoe, commanding the Maryland militia on the 17th June 1814, (then Major Biscoe,) ordered the tobacco to be rolled out of the warehouses in Nottingham, a large breastwork to be made of the tobacco, and the cannon to be planted behind it; that the militia then fired on the British, who manned eleven barges, commanded by Commodore Barry, who, at the time, retreated; that the British, some time after, took the most of the tobacco from that warehouse, and kept possession of the waters of the Patuxent river, as high as Nottingham, until they burnt the Capitol; that Captain Naylor's company of Maryland militia was stationed behind Magruder's warehouse, and, as soon as the British barges came within gunshot, commenced firing upon them, and continued until the ammunition was expended; that they then retreated, and the enemy immediately landed, set fire to the warehouse, and burnt all the tobacco within it; that this was on the 17th June, 1814, the day the militia prevented them from coming to Nottingham, which, probably, prevented that warehouse from sharing the same fate; that the witness was inspector at Magruder's warehouse, but commanded a company on that day at Nottingham; that Charles J. Catlett was a large owner of tobacco and a very heavy sufferer; that the witness was appointed inspector in January, 1813, at Magruder's warehouse; and that, previous to his appointment, James Naylor was the inspector. In these papers no testimony can be perceived by the Third Auditor which will serve to bring the claim within the principles of the acts of 1816 and 1817, before noticed. Of the use of the warehouse at Nottingham for any military purpose there is no proof whatever, nor yet of its having ever been destroyed by the enemy; and that the taking of the tobacco therefrom by the enemy was not at the time at which the same was rolled out and used as a breastwork by the American troops, nor till months thereafter, is evident—the latter transaction appearing, by Mr. Baden's deposition, to have been on the 17th June, 1814, and the former appearing, by Major Biscoe's last letter, to have been on the retreat of the enemy from the city of Washington; wherefrom, according to historical evidence, they retired on the night of the 25th August, 1814. And had the taking of the tobacco by the enemy been while it was in the use of the American troops, and because thereof, the testimony affords no means of determining the quantity used in the breastwork, nor what portion of that belonged to the claimant.

As to Magruder's warehouse, it is not pretended to have ever been occupied as a place of deposit for military or naval stores, or as barracks for the military forces of the United States, either by or without an order of an officer or agent of the United States; and a like remark is applicable to the warehouse at Cedar Point, the testimony in relation to which is contained in letters of the Hon. B. J. Semmes and the Hon. D. Jenifer to the Committee of Claims, each dated February 27, 1832. The latter gentleman represents that some schooners of the enemy were anchored off the warehouse; that some of the crews landed, and were in the act of taking away some of the tobacco, when General Stuart, the commander of the troops in the vicinity, ordered them down, and commenced an attack with artillery upon the enemy at the warehouse; that, after firing several shots from cannon,

&c., the warehouse was set fire to by the enemy, and burned to the ground, with all the tobacco then in the house; that, had the attack not been made by the American troops, the house, it is believed, would not have been fired, as above and below, on the Potomac, tobacco warehouses were visited by the enemy and not destroyed; and that, being at the time acting as an aid to the general, the writer was present and saw the attack and burning of the tobacco warehouse. From this testimony of an eyewitness, it is obvious that the destruction of the warehouse was not caused by any occupation of it by the American troops, or even of their having been stationed against it and using it as a protection, but in consequence of their having been ordered down, and attacked the enemy when in possession of it, and in the act of carrying off tobacco therefrom. It shows, too, that the enemy, in taking away tobacco, were not governed by the circumstance of the building in which it was placed having been used, or not, for a military purpose. Had not the claim appeared to the Third Auditor to be such as can in no point be brought within the principles of the acts of 1816 and 1817, he would, as to the quantities of the tobacco taken or destroyed by the enemy belonging to the claimant, and the rates to be allowed for the same, have required additional testimony, of a kind different from that afforded by the tobacco notes, &c., produced. The present possession of such notes is not considered as any certain evidence that the tobacco they relate to belonged to the claimant when the warehouses therein mentioned were destroyed or ravaged by the enemy, nor, indeed, that the same was then in those warehouses. To prove that the several hogsheads which the notes relate to were then in the warehouses, evidence on oath, drawn from the books of the inspector at each, would have been deemed necessary; and to prove the fact of their having belonged to the claimant, and the rates which might have been allowable for them, verified extracts from the account books of the claimant, showing the dates of purchase, and the prices paid for them, would have been requisite. It is observed that, as respects the charge for one hundred and forty-nine hogsheads at Nottingham, the vouchers relating to *fifty-one* consists not of notes for the receipt thereof into the warehouse, but of manifests for the delivery of the same out of it; and that the vouchers as to *two* of the hogsheads at Magruder's are of the same description. In case the claim had been admissible, on the principles of the acts of 1816 and 1817, the value of the tobacco at the time it was taken or destroyed would, in conformity with the rules which governed in the settlement of claims under those acts, have had to be taken as the guide for fixing the rates of allowance; and to arrive at such value, the cost prices before the peace, and not the greatly enhanced prices obtainable thereafter, would serve as the most fit criterion. As, however, the claim is considered by the Third Auditor to be in no point allowable by the accounting officers, on the principles of the before mentioned acts of 9th April, 1816, and the 3d of March, 1817, according to which they are directed to settle it, he, without asking for any further testimony, refers the case to the Second Comptroller for his decision thereon.

PETER HAGNER, *Auditor*.

ALBION K. PARRIS, Esq.,
Second Comptroller

No. 4.

TREASURY DEPARTMENT,
Second Comptroller's Office, January, 1837.

I concur with the Third Auditor in regard to the claim mentioned in the foregoing report.

ALBION K. PARRIS, *Comptroller.*

Endorsed: "(Copy.) Decision of the accounting officers, December 30, 1836."

No. 5.

Order of the President.

Let Mr. Catlett procure a statement of the amount of his debt to the government. Let him have a conjectural statement made of the value of the tobacco: first, at the war price; second, at the peace price; and let these be reported to me.

J. TYLER.

Mr. Hagner will make the statement as early as possible.

Endorsed: "Instructions of the President of the United States, September, 1841."

No. 6.

TREASURY DEPARTMENT,
Third Auditor's Office, September 20, 1841.

SIR: In obedience to your instructions in the case of Charles J. Catlett, which require the procuring by him of a statement of the amount of his debt to the government; the making a conjectural statement of the value of the tobacco: first, at the war price; second, at the peace price; and the reporting these to you by this office, I have the honor to report that, by certificates of the Register of the Treasury and Fourth Auditor, Mr. Catlett appears to stand indebted—

On the books of the former, in the sum of.....	\$5,633 93
On the books of the latter, in the sum of.....	3,228 06

8,861 99

To show the war price, Mr. Catlett has procured certificates from John Kurtz, esq., and General Walter Smith—the former expressing that, on reference to the books of Bowie & Kurtz, who were large purchasers of Maryland tobacco, he found that the best crops of Patuxent growth were worth about \$50 per hogshead, average; and

General Smith declaring that he would rate the best crops of Maryland tobacco, during the late war with Great Britain, at about \$60 per hogshead ; adding, that the above estimated value of the crops of the best Maryland tobacco is to be understood as including firsts and seconds of the same crops, and that the purchases made by Mr. Catlett on the Patuxent had always been understood by him to be among the best crops in that vicinity.

Relative to the peace price, a sale appears to have been effected by Mr. Catlett to P. Janney, esq., in November, 1815, of five hogsheads, (two of firsts and three of seconds,) and which he represents to have been refuse,) at \$96 90 $\frac{1}{2}$ on an average, the rate charged in the claim heretofore preferred by him, and at which, although urging it to be too low, he is understood to be disposed to have it, for the present purpose, now rated.

Taking the quantity of tobacco, as charged in the claim of Mr. Catlett, at 268 hogsheads, (the war price,) assuming the average between \$50 and \$60 per hogshead, (the rates specified in the certificates of Mr. Kurtz and General Smith, say \$55,) would amount to \$14,740 ; and the peace price, at the rate Mr. Catlett heretofore charged, as aforesaid, would amount to \$25,970 27.

As regards the actual quantity of tobacco, the property of Mr. Catlett, taken or destroyed by the enemy in the warehouses, no further evidence, it is observed, has been adduced to remedy the defects pointed out in the latter part of the Third Auditor's report on the case, dated 30th September, 1836, a copy whereof is amongst the papers, and to which I respectfully refer.

Apprehensive that you may not be informed of the facts about to be mentioned, I deem it incumbent on me to add that, in pursuance of a resolution of the Senate, passed on the 29th January, 1839, *all the papers in the case, and a copy of the report of the Third Auditor, before mentioned, were transmitted to the Senate, and referred to the Committee of Claims ; and that in a few days thereafter, on motion of the chairman of that committee, it was "ordered that the Committee of Claims be discharged from the further consideration of the petition of Charles J. Catlett, and that the petitioner have leave to withdraw his petition and papers."*

With the highest respect, your most obedient servant,

J. THOMPSON, *Acting Auditor.*

The PRESIDENT OF THE UNITED STATES.

Endorsed : "Report of the acting Third Auditor to the President, September 20, 1841."

No. 7.

SEPTEMBER 23, 1841.

The President has examined the claim of Charles J. Catlett, under the special act passed for his relief, and believing it to be a meritorious claim, directs the accounting officers to re-examine the case, and,

if they cannot admit the claim, to report the case specially to him, with their reasons for their disallowance. It is desirable that their action should be had as soon as practicable.

Endorsed: "Additional instructions of the President of the United States, 23d September, 1841."

No. 8.

Additional report of the Third Auditor on the claim of Charles J. Catlett, under the act of Congress for his relief, approved 2d July, 1836, made in pursuance of instructions from the President of the United States, dated 23d September, 1841, directing the accounting officers to re-examine the case, and if they cannot admit the claim, to report the case specially to him, with their reasons for their disallowance.

TREASURY DEPARTMENT,
Third Auditor's Office, September 28, 1841.

Reference is made, in the first instance, to the report of the Third Auditor, dated 30th December, 1836, and concurred in by the Second Comptroller, wherein they have decided that no part of the claim is allowable by them, "upon the principles of the acts of Congress of the 9th April, 1816, and the 3d March, 1817," agreeably to which they were, by the aforesaid acts for Mr. Catlett's relief, directed to settle it, and wherein reasons are assigned for that decision.

Mr. Catlett had, before presenting to the Senate the petition giving rise to the act for his relief, sought (so far as regards his tobacco at Nottingham) redress by petition presented to the House of Representatives; and to the report of the Committee of Claims thereon, concluding with a resolution for its rejection, printed in the 3d volume of Reports of Committees House of Representatives, 1st session 22d Congress, No. 413, reference is also made. The papers had been referred by the committee to this office for information; and of the Third Auditor's reply, noticed in the report, a copy is placed herewith. The subsequent petition appears to be much more comprehensive in its scope, and to have been, on its presentation to the Senate, referred to the Committee on Finance, by whom, on the 13th of May, 1834, a report was made, accompanied by a bill, on which there appears to have been no final action at that session. At the succeeding session the committee presented a like report, accompanied by a bill directing the settlement of the claim "upon just and equitable principles;" and in this form the bill was rejected.

A reconsideration of the vote was moved, but without any further proceedings at that session of Congress. Another bill in the same form was reported on the 27th January, 1836, and was read a second time, and considered as in Committee of the Whole, on the 29th of March, when it was ordered "that it lie on the table." The consideration of it was resumed on the 24th of June, 1836; and having been then amended by striking out the words "*and allow upon just*

and equitable principles," and substituting the words "*upon the principles of the acts of Congress of the 9th April, 1816, and the 3d March, 1817,*" it became the law enacted for Mr. Catlett's relief. The acts of 1816 and 1817 had to be executed by a commissioner, and who, by the 12th section of the former of those acts, was required to establish, under the direction, or with the assent, of the President of the United States, such rules as are therein pointed out; and for the rules so established, and various others prescribed by the President for the government of the commissioner, and wherein the President's constructions of sundry provisions of the laws appear, reference is made to the 3d volume of State Papers, 1st session 16th Congress, No. 41, H. R.

The duties of the commissioner commenced on the 1st July, 1816, and terminated on the 9th April, 1818; soon after which, the business then in his office, and not finally acted on by him, was, with his records and files, transferred by law to this office. On the 1st November, 1816, only four months after the commissioner entered on his office, he was prevented by the President from making any decisions under the 9th section of the law of April, 1816, being the section which made provision for the payment for damages by the destruction of buildings by the enemy while the same were occupied as a military deposite, under the authority of an officer or agent of the United States; and, thereafter, no award was ever made by the commissioner under that section. At the following session of Congress, the President, in a message thereto, assigned as the reason for his suspending proceedings relative to the claims under the section in question, its "having received a construction giving it a scope of great and uncertain extent." The message, and the report of the committee to whom it was referred, are printed in the 1st volume of State Papers, 2d session 14th Congress, and numbered 10 and 11. The committee, in that report, have declared a decided opinion, from a conversation with the commissioner generally upon the provisions of the act, "that he had given, and was still disposed to give, to the law an extension of construction not contemplated by Congress at the time of its passage, and not warranted by its object."

An explanatory report of the commissioner may also be seen in the same volume, numbered 15. As regards claims under the 9th section of the amendatory act of the 3d March, 1817, referred to in the act for Mr. Catlett's relief, limiting the duty of the commissioner to the carefully examining and investigating the same, and reporting the facts in such [each] case to Congress, that such provision might be made for the relief of the respective claimants as should be deemed just and proper. In conformity therewith, reports of the facts in numerous cases under the aforesaid ninth section were, from time to time, reported to Congress by the commissioner, prior to the 9th April, 1818; but no provision for the relief of the claimants was enacted till the 3d March, 1825, when a law was passed providing that any person having a claim for a building destroyed by the enemy during the late war, under the act of the 9th April, 1816, and the amendatory act of 3d March, 1817, which had been presented to the commissioner before the 10th April, 1818, and

not paid under said acts, nor finally rejected by him, might, within nine months thereafter, present the same, with the evidence to support it, to the Third Auditor, for examination and adjustment; and directing him, if he should be satisfied that the building or buildings for which damages were claimed "was, at the time of its destruction, occupied by order of any agent or officer of the United States as a place of deposit for military or naval stores, or as a barracks for the military forces of the United States," to proceed to assess the damages and certify the amount for payment in the way therein mentioned. A report of the Third Auditor's proceedings under the law of 1825 was made to the Senate in January, 1827, and forms Senate document No. 36, second session nineteenth Congress. That law authorizing payment for buildings only, no allowance for personal property destroyed therein was made in any case. The claims for personal property so destroyed amounted, as the report shows, to nearly \$300,000, and not a dollar thereof has ever been paid by the United States—all the subsequent applications to Congress for indemnification, as to many of these cases, having failed. For the relief of owners of buildings destroyed by the enemy while occupied as places of deposit for military stores, or as barracks for the troops, by order of officers of the United States, sundry special acts have been since passed, but without authorizing, in a single instance, it is believed, any payment for personal property destroyed in, or taken away from, such buildings.

At the first session of the twenty-second Congress the Committee of Claims of the House of Representatives appear to have been instructed, by a resolution, to inquire into the expediency of making further provision for extending and more effectually carrying into effect the provisions of the act of the 9th April, 1816, before mentioned; and on the 16th March, 1832, the committee made a report, (printed and numbered 386,) concluding with a resolution as follows: "*Resolved*, That it is inexpedient to legislate on the matters contained in the resolution."

The committee appended thereto a very elaborate report, made on 5th April, 1824, by a select committee appointed to inquire what further legislative provisions were fit and necessary to carry into effect the provisions of the aforesaid act of the 3d March, 1817, amendatory of that of the 9th April, 1816. The latter report was accompanied by a bill, and which, by renewal at the succeeding session of Congress, became, it is believed, after modification, the law of the 3d March, 1825, before noticed. This general view of the course pursued in relation to cases arising under the ninth section of the law of the 9th April, 1816, by President Madison and by Congress, has been presented because it is deemed to manifest the design to have been at all times that the aforesaid ninth section should be construed strictly; and a knowledge of this course had due influence in the action of this officer on the claim in December, 1836; and the course pursued in Congress, with reference to the particular case of Mr. Catlett, has been here again noticed, because it is considered to evince an intention that he should receive no relief, unless he could bring his claim within the principles of the aforesaid laws of 1816 and 1817.

The papers in the case appear to have been recently laid before the late Attorney General, and by whom an opinion has been given, as follows :

“ I am satisfied that Mr. Catlett is entitled to relief, under the special act passed for his benefit ; but I have not as yet been able to bring my mind to a satisfactory conclusion as to the proper measure of compensation to be applied, namely, whether it should be the war price or the peace price that ought to be allowed.

“ J. J. CRITTENDEN.”

The opinion, it is observed, does not express that Mr. Catlett is entitled to relief under the special act, *upon the principles of the aforesaid laws of 1816 and 1817* ; and, verbally, Mr. Catlett has signified that the Attorney General threw those laws entirely out of view, and relied on some other ground.

The special act appears to me to confer no power on the accounting officers to settle the claim upon any other principles than those of the laws of 1816 and 1817, to which it refers ; nor do I see it declared in the opinion that the *accounting officers* would be justified in settling the claim upon different principles, under the special act, independent of any other authority.

To show that no allowance can be made on the claim, “ upon the principles of the acts of Congress of the 9th of April, 1816, and 3d of March, 1817,” the claim will be now reviewed, taking the items separately, and the testimony applicable to each ; and,

1. As to one hundred and forty-nine hogsheads of tobacco at Nottingham. The earliest letter of General Biscoe to the claimant contains as follows :

“ At your request for information in relation to the tobacco (your property) taken from the warehouses at Nottingham by the British during the period of their invasion, I have to state that a part of your tobacco was used by my order, as commanding officer at Nottingham, for the purpose of erecting a breastwork for the defence of the place ; and, with the exception of three or four hogsheads, I am confident, out of the sale I made to you of one hundred and five hogsheads, that the remainder was carried away by the enemy. I also recollect that Benjamin Oden, esq., remarked that a portion of the tobacco thus used was sold by him to you.”

The second letter from General Biscoe to the claimant purports to be in answer to a request for information as to the defence of *Magruder's* warehouse, in June, 1814, and, after representations relative thereto, proceeds thus :

“ I am aware that you sustained considerable loss in tobacco there, and *elsewhere* on the Patuxent river, from the circumstance of your having purchased of me more than one hundred hogsheads, which, with the exception of a few (say, to the best of my recollection, four or five) at the warehouses *here*, [the letter is expressed to have been written at *Nottingham*,] were either burnt in *Magruder's* warehouses at the period above stated, or were carried away by the enemy, on their retreat from the city of Washington, to their shipping at this place. *At one period* I used the tobacco in the *warehouses here* for

military purposes; a *part* of which, I recollect, was your property, having sold it to you."

And a deposition of James Baden contains as follows:

"General George W. Biscoe, commanding the Maryland militia, on the 17th day of June, 1814, (then Major Biscoe,) ordered the tobacco to be rolled out of the warehouse in Nottingham, Prince George's county, Maryland, and a large breastwork made of the tobacco—the cannon planted behind it; and then we fired on the British, who manned eleven barges, commanded by Commodore Barry, who at that time retreated. The heads were out of many hogsheads, and the tobacco a good deal torn out. The British, *some time after*, took the most of the tobacco from that warehouse; and they kept possession of the waters of the Patuxent river, as high as Nottingham, from that time until they burnt the Capitol."

There is no proof, nor is it even alleged, that the *warehouse* at Nottingham was ever occupied for any military purpose whatever, nor yet that it was destroyed by the enemy. It must not only have been occupied, by order of an officer or agent of the United States, as a place of deposit for military or naval stores, or as barracks for the military forces of the United States, but have been destroyed by the enemy while in such occupation, and in consequence thereof, to have brought the tobacco in it within the 9th section of the act of the 9th of April, 1816, even as construed by the commissioner.

The part of the aforesaid deposition of James Baden, in which, after mentioning the breastwork, and the cannon planted behind it, he says, "and then we fired on the British, who manned the eleven barges," &c., is not only unsustained by the testimony of General Biscoe, the commanding officer, but seems to be in conflict with another part of Mr. Baden's own testimony, which, as regards Magruder's warehouse, will be hereafter noticed, and in which he represents that warehouse to have been burnt by the enemy, and adds: "this was on the 17th day of June, 1814, as above stated, *which day we prevented them from coming to Nottingham*, which probably prevented that warehouse from sharing the same fate."

Divested of the testimony as to that firing, the case will be devoid of all proof of any conflict at Nottingham, even in June, 1814. It seems obvious from the testimony, that the tobacco then rolled out of the warehouse there, and formed into a breastwork, was only temporarily used, and that the enemy did not carry off the tobacco from the warehouse there till they were on their retreat from Washington, after burning the Capitol, in August. Had the tobacco so used been taken or destroyed while in such use, the testimony as observed in the former report, affords no means for determining the quantity taken for the breastwork, nor how much of what was taken belonged to Mr. Catlett. General Biscoe, in his first letter, alludes to a sale by him of 105 hogsheads to Mr. Catlett; but it appears, by his second letter, that not more than four or five of them were at Nottingham—all the others being represented to have been either burnt in *Magruder's* warehouse in June, or carried away from some other place or places on the Patuxent by the enemy on their retreat in August.

As to 51 of the 149 hogsheads, charged with being in the ware-

house at Nottingham, the vouchers, as mentioned in the former report, consist not of notes for the receipt thereof into the warehouse, but of manifests for the delivery of the same out of it. These vouchers have now been separated from the others, and will be found to show that 35 of the 51 were delivered, in 1812 and 1813, to George Biscoe & Son, and put in their barn; that two others were delivered, in 1813, to George Biscoe, and put in his barn; that four others were delivered in 1811, 1812, and 1813, to Francis Green, William Morton, and Edward Skinner, and put in George Biscoe's barn; that two others were delivered in March, 1814, to William Sasscer, and put in George Biscoe's barn; that six others were delivered, in 1813, to Gerrard Greenfield, and put in the red barn; and that the remaining two were delivered, in 1813, to Walter T. Greenfield, and put in red store. Any military occupation of these barns and store at any time is not proved, or even alleged; nor is there any proof or allegation of the destruction of those buildings by the enemy, or of the carrying off by them of any tobacco therefrom.

2d. As to 115 hogsheads of tobacco at Magruder's.—The statement in relation thereto, in General Biscoe's second letter to the claimant, is as follows: "You request information on the subject of the defence of Magruder's warehouse in June, 1814, by a detachment of militia acting under my orders. In reply, I have to state that the captain in command reported to me his encounter with the enemy at that place. He stated that, on the near approach of the British barges (said to be) under the command of Commodore Barry and Colonel Malcomb, of marines, he posted his men behind the warehouse, situated within thirty yards of the shore; and that, so soon as his fire of musketry could be deemed effectual, he commenced, and continued to do so for an hour or two, being under cover of the warehouses. Finally his ammunition became expended, and he was compelled to retire. The enemy then landed and set fire to the warehouses, which were burnt." The remaining part of the statement has been previously cited.

Jesse Selby, in a deposition dated December 20, 1833, has testified that he was stationed at Magruder's warehouse, on the Patuxent river, in June, 1814, in a company of Maryland militia, commanded by Captain Joshua Naylor; and that the warehouse, he verily believes, was burnt in consequence of the said company being there, and the said warehouse affording protection, and being occupied by them; also, that Captain Naylor died in the year 1825. And, in the afore-said deposition of James Baden, he has testified that Captain Naylor's company of Maryland militia was stationed behind Magruder's warehouse, and as soon as the British barges came within gunshot, commenced firing upon them, and continued until the ammunition was expended; that they then retreated, and the enemy immediately landed, set fire to the warehouse, and burnt all the tobacco within it; that this was on the 17th June, 1814, the day the militia prevented them from coming to Nottingham, which probably prevented that warehouse from sharing the same fate; that the witness was inspector at Magruder's warehouse, but commanded a company on that day at Nottingham; that Charles J. Catlett was a large owner of tobacco,

and a very heavy sufferer; that the witness was appointed inspector in January, 1813, at Magruder's warehouse; and that, previous to his appointment, James Naylor was the inspector.

That the warehouse was, at the time of its destruction, or indeed at any time, occupied by order of an officer or agent of the United States, as a place of deposit for military or naval stores, or as barracks for the troops, is not pretended; and without such an occupation thereof at the time of destruction, the tobacco destroyed in it could not have been paid for, under the 9th section of the act of 9th April, 1816, even as construed by the commissioner. The tobacco could not have been brought within that section without bringing the building also within it; and the non-presentation of a claim for the destruction of the building may be viewed as a strong manifestation that its owners were satisfied that there had been no such military occupation of it as to entitle them to any remuneration for its destruction under the laws of 1816 and 1817.

3d. As to 4 hogsheads of tobacco at Cedar point.—The testimony in relation to the destruction of the warehouse there, is continued in letter of the Hon. B. J. Semmes and the Hon. D. Jenifer; and with reference to which it may suffice here merely to recite, from the report of this office, the following observations; "From this testimony of an eyewitness, it is obvious that the destruction of the warehouse was not caused by any occupation of it by the American troops, or even of their having been stationed against it, and using it as a protection; but in consequence of their having been ordered down and attacked the enemy when in possession of it, and in the act of carrying off tobacco therefrom. It shows, too, that the enemy, in taking away tobacco, were not governed by the circumstance of the building in which it was placed having been used, or not, for a military purpose."

Unable to perceive that the accounting officers possess any power, under the special act for Mr. Catlett's relief, to settle his claim upon any other principles than those of the laws of the 9th April, 1816, and 3d March, 1817, therein mentioned; or that, upon the principles of those laws, as the same have been at all times construed in acting under them, any portion of the claim can be allowed by the accounting officers, I am constrained by a sense of duty, without making an allowance on it, to again report the case to the Second Comptroller for his decision thereon.

PETER HAGNER, *Auditor.*

ALBION K. PARRIS, Esq.,
Second Comptroller.

No. 9.

TREASURY DEPARTMENT,
Second Comptroller's Office, September 29, 1841.

SIR: The Attorney General having, by direction of the President of the United States, examined the claim of Charles J. Catlett,

under the act for his relief passed July 2, 1836; and having given an opinion that said Catlett is entitled to relief under that act; and having also certified that, in examining the case, and given an opinion, he had reference to the acts of 1816 and 1817, as furnishing the rate of principle for the decision of the case, I think an account should be reported, agreeably to the opinion of the Attorney General; and the papers are accordingly referred back to you, that an account may be accordingly reported.

Respectfully, &c.

ALBION K. PARRIS, *Comptroller*.

PETER HAGNER, Esq.,
Third Auditor.

No. 10.

THE UNITED STATES,

To Charles J. Catlett,

DR.

For this sum, allowed under a special act of Congress for his relief, approved July 2, 1836, *in pursuance of an opinion of the late Attorney General, and a decision of the Second Comptroller founded thereon*, for tobacco taken or destroyed by the British during the late war with Great Britain, at Magruder's warehouse, Cedar Point warehouse, and Nottingham warehouse, all in the State of Maryland.....

\$8,861 99

TREASURY DEPARTMENT,

Third Auditor's Office, September 29, 1841.

Stated by

T. GUNTON.

TREASURY DEPARTMENT,

Second Comptroller's Office, September 29, 1841.

Examined by

J. SEAVER.

Endorsed: "No. 13280. Account of Charles J Catlett. Act for his relief. \$8,861 99. Reported September 29, 1841. Requisition No. 9158, dated September 29, 1841, for five thousand six hundred and thirty-three dollars and ninety-three cents, to be carried to his credit on the books of the Register of the Treasury, (\$5,633 93;) requisition No. 9159, dated 29th September, 1841, for three thousand two hundred and twenty-eight dollars and six cents, to be carried to his credit on the books of the Fourth Auditor, (\$3,228 06.)"

No. 11.

[No. 13280.]

TREASURY DEPARTMENT,

Third Auditor's Office, September 29, 1841.

I certify that there is due from the United States to Charles J. Catlett, under a special act of Congress for his relief, approved 2d

July, 1836, and *in pursuance of an opinion of the late Attorney General, and a decision of the Second Comptroller founded thereon*, the sum of eight thousand eight hundred and sixty-one dollars and ninety-nine cents, for tobacco taken or destroyed by the British during the late war with Great Britain, at Magruder's warehouse, Cedar Point warehouse, and Nottingham warehouse, all in the State of Maryland; and for which amount two requisitions will issue in favor of the Treasurer of the United States—one for the sum of five thousand six hundred and thirty-three dollars and ninety-three cents, to be carried to the credit of the said Charles J. Catlett, on the books of the Register of the Treasury; and the other for three thousand two hundred and twenty-eight dollars and six cents, to be carried to his credit on the books of the Fourth Auditor—as appears from the statement and vouchers herewith transmitted for the decision of the Second Comptroller of the Treasury thereon.

PETER HAGNER, *Auditor.*

ALBION K. PARRIS, Esq.,
Second Comptroller of the Treasury.

No. 12.

SECOND COMPTROLLER'S OFFICE.

I admit and certify the above balance, this 29th day of September 1841.

ALBION K. PARRIS.
Second Comptroller.

Endorsed: "No. 13280—Charles J. Catlett."

No. 13.

"An act to authorize the payment for property lost, captured, or destroyed by the enemy, while in the military service of the United States, and for other purposes," approved April 9, 1816; and the act to amend the same, approved March 3, 1817.

The original act, by the 1st and 2d sections, provides compensation for "horses" killed in battle, or dying of wounds received in battle, or for want of forage, &c.; or "in consequence" of the owner being "dismounted, or separated and detached from the same," &c.

By the 3d section, compensation is provided for damage "by the loss, capture, or destruction, by an enemy, of any horse, mule, ox, wagon, cart, boat, sleigh, or harness, while such property was in the military service of the United States," &c.

By the 5th section, "for property that has been impressed or taken by public authority for the use or subsistence of the army, &c., and the same shall have been destroyed, lost, or consumed."

By the 9th section, for damage by the destruction of private "houses or buildings by the enemy, while the same were occupied as a military *deposit*, under the authority of an officer or agent of the United States," &c.: "provided it shall appear that such occupation was the cause of the destruction."

In the amendatory act of the 3d of March, 1817, it is declared that the original act shall "extend only to houses or other buildings occupied by an order of an officer or agent of the United States, as a place of deposit for military or naval stores, or as barracks for the military forces of the United States," &c.

The 3d section provides compensation for any person "who has sustained damage by the loss of any horse, mule, ox, wagon, cart, boat, sleigh, or harness *while* such property was in the military service of the United States, either by impressment or contract," &c.

Endorsed: "Abstract of the laws of the 9th of April, 1816, and the 3d of March, 1817."

IN THE HOUSE OF REPRESENTATIVES, *February 22, 1843.*

Mr. LINN, from the Committee on Public Expenditures, to which the subject had been referred, submitted the following supplemental report:

The Committee on Public Expenditures, to whom was referred a resolution of the House instructing them "to inquire into the nature of a claim formerly presented to Congress by Charles J. Catlett, of Virginia, which, by a law passed on the 2d July, 1836, the proper accounting officers of the Treasury Department were authorized and directed to settle upon the principles of the acts of Congress of the 9th of April, 1816, and 3d of March, 1817; whether said claim has been settled, and what amount paid; whether the accounting officers of the Treasury Department allowed said claim on principles established by the laws above referred to, or whether it was done upon the authority or order of the President of the United States, and settled upon the principles authorized by law; why such settlement was not made at an earlier period; and if upon such order of the President, under what law or by what authority he directed the payment of such claim; and whether such claim was first referred to be paid on such order, and by what authority and under what circumstances the said accounting officer ultimately allowed it, and to what fund such payment was charged; and to report any and all the circumstances deemed pertinent, connected with the settlement of said claim," respectfully report:

That, on the 30th day of August last, the committee submitted a report in relation to the matters referred to them.—(See Rep. No. 1103, H. R.) This report was confined to the testimony taken before the committee and certain letters of the President, directing the action of the department of the government to whom belonged the consideration of the claim of Mr. Catlett. Since the making of that report,

complaints that it is incomplete, and does injustice to the persons interested, inasmuch as it is unaccompanied with copies of the papers upon which the action of the government was founded, have reached the committee. With the view of removing the cause of these complaints, and supplying the deficiencies of the former report, the committee beg leave to submit the papers referred to. A list of them will be found subjoined to the letter of the Auditor, from whose office the copies were obtained.

TREASURY DEPARTMENT,
Third Auditor's Office, February 15, 1843.

SIR: I have the honor to acknowledge the receipt of your letter of the 8th instant, returning to me the papers in the case of Charles J. Catlett, in two parcels, and requesting to be furnished with copies of those contained in one of the bundles, in order that they may be reported to the House.

A transcript of the papers contained in the parcel designated to be copied, and a list of which is subjoined, has accordingly been made, and is herewith transmitted.

With great respect, your most obedient servant,

PETER HAGNER, *Auditor.*

Hon. A. L. LINN,

Chairman Com. on Public Expenditures, H. R.

List.

Copy of letter from the Third Auditor to Hon. P. Ihrie, January 25, 1832.

Senate printed report No. 55, January 13, 1835.

Senate printed bill No. 101, January 13, 1835.

Senate printed bill No. 95, January 27, 1836, with endorsement of the President, June 7, 1841.

Decision of accounting officers, December 30, 1836.

Copy of a letter from the Hon. D. Webster to Second Comptroller, February 27, 1837.

Copy of a letter from R. Smith, esq., to the Solicitor of the Treasury, September 11, 1841.

Certificate of the Register of the Treasury, September 12, 1841.

Certificate of the Fourth Auditor, September 20, 1841.

Instructions of the President, (no date.)

Report of the acting Third Auditor, September 20, 1841.

Instructions of the President, September 21, 1841.

Additional instructions of the President, September 23, 1841.

Additional report of the Third Auditor, September 28, 1841.

Attorney General's opinion, and his and R. Smith's letters, September 28, 1841.

Second Comptroller's letter to Third Auditor, September 29, 1841.

Official statement and report No. 13280, September 29, 1841.

List of papers laid before the Attorney General.

Abstract of the laws of 9th April, 1816, and 3d March, 1817.

TREASURY DEPARTMENT,
Third Auditor's Office, January 25, 1832.

SIR: In reply to your letter of the 23d instant, expressing that the Committee of Claims had instructed you to request such information in relation to the claims it enclosed as might be within my possession, I have the honor to observe, so far as concerns the one in the name of Charles J. Catlett, whose petition appears to have for its object the passage of a law to indemnify him for a large quantity of tobacco represented to have been, during the late war with Great Britain, deposited in the public warehouse in Nottingham, to have been used by George W. Biscoe, then commanding a detachment in the Maryland militia, in erecting a breastwork to shelter and defend his men against the attacks of the enemy, and to have been taken possession of by the enemy, and destroyed or converted to their own use; that the records of the late commissioner of claims cannot be found to afford any evidence of the exhibition to him of any claim for the tobacco in question; that one of the laws he had to administer authorized payment for property taken for the use of the army, and destroyed, lost, or consumed, on the claim being sustained by such evidence as the regulations established for his government prescribed; and that no reason appears to be assigned for the non-presentation of a claim for remuneration to him, while the laws alluded to were in existence, nor yet for the non-obtainment of any testimony on the subject for more than fourteen years, when the facts and circumstances may be supposed to have, in a considerable degree, escaped from recollection.

The only document accompanying the petition is a letter to the petitioner, from Mr. Biscoe, dated 28th August, 1828, verified on oath; and the evidence he has therein given seems to be indefinite in the extreme. It is as follows: "At your request for information in relation to the tobacco, your property, taken from the warehouse at Nottingham, by the British, during the period of their invasion, I have to state that a part of your tobacco was used, by my order, as commanding officer at Nottingham, for the purpose of erecting a breastwork for the defence of the place; and, to the exception of three or four hogsheads, I am confident, out of the sale I made to you of one hundred and five hogsheads, that the remainder was carried away by the enemy. I also recollect that Benjamin Oden, esq., remarked that a part of the tobacco thus used was sold by him to you." Mr. Biscoe has not, it will be perceived, designated either *how much* of the petitioner's tobacco was included in the *part* used by his order in erecting a breastwork, or the *date* at which it was thus taken and used, nor declared that it was in *such use* at the time it was taken by the enemy. According to the language of the letter, near the beginning, it was "taken from the warehouse at Nottingham, by the British;" and hence it may be inferred that the use

thereof as a breastwork had ceased, and that it had been returned to the warehouse before the arrival of the enemy.

The papers are returned.

With great respect, your most obedient servant,

P. HAGNER, *Auditor*.

Hon. PETER IHRIE,
Committee of Claims

Endorsed: Copy of a letter to Hon. Peter Ihrie, of Committee of Claims of House of Representatives, from Third Auditor, dated January 25, 1832.

IN SENATE OF THE UNITED STATES, *January 13, 1835.*

Mr. TYLER made the following report, with Senate bill No. 101.

The Committee on Finance, to whom was referred the petition of Charles J. Catlett, respectfully report:

That the losses of the petitioner appear to have been very severe, by reason of the military operations of the enemy, during the late war with Great Britain. He had large quantities of flour and tobacco in store at Alexandria, and considerable quantities of tobacco in the Maryland warehouses, situated at various points on the waters making into the Chesapeake bay, all of which were burnt, captured, or destroyed by the enemy. In regard to the chief bulk of his losses, the committee can perceive no safe principle on which they can rest in recommending an allowance. The utmost extent to which the government can with safety go, in remunerating losses to individuals who have been subjected to injury by the fortunes of war, is to protect them against *its own act and its consequences*. Thus, if a house be occupied by the troops of the country, for military operations, it thereby is placed on the footing of any other military position, and may be justifiably destroyed by the enemy. So, if private property is used to assist in the defence of the country, or in the prosecution of offensive military operations, it becomes as liable to be destroyed by the enemy as any part of the material of the army; and, if destroyed, the government is fairly answerable for its value. Keeping this principle in view, the committee can find no sufficient authority to recommend the payment of by far the largest portion of the claim set up by the petitioner. But there are portions of the claim which the committee consider as falling under the principle thus laid down. The petitioner had in store, at Magruder's warehouse, on the Patuxent river, 115 hogsheads of tobacco, which, along with the warehouse, appear to have been burnt by the British, in June, 1814. He had also a small number of hogsheads in store at Cedar Point warehouse, which were destroyed in the same way. *The proof is satisfactory to show that very smart conflicts between detachments of the enemy and Maryland troops occurred at both these places, and that at*

Nottingham warehouse, seven miles distant from Magruder's, where the petitioner had in store 149 hogsheads of tobacco, a breastwork was made of the tobacco, for the defence of the American troops.

While at Magruder's and Cedar point, the American troops found shelter under the warehouses, and from thence continued to fire on the enemy until their ammunition was expended. It is also in proof that other warehouses, equally exposed, were left unburnt, in consequence, as is believed, of the absence of all military operations in their immediate neighborhood, by the troops of the United States. The destruction of the warehouses at Magruder's and Cedar Point, with their contents, and the abduction of the tobacco from Nottingham, seem fairly to be traceable to the principle laid down by the committee; and to this extent they report a bill for his relief. The committee have not been able to satisfy themselves as to the proper price which should be allowed for the tobacco thus destroyed and carried off. At the time of the destruction, the prices for tobacco were merely nominal; but, after the restoration of peace, the price became high. It is fairly to be inferred that the petitioner would have continued to hold it until the peace, say for one year or more, he being at the time a merchant of wealth and respectability, and, like others in the country, indulging in speculation in an article which time improves in quality, flavor, and price. Under all the circumstances, however, it has been deemed most advisable to submit the subject to an equitable decision on the part of the accounting officers, when the intention of the petitioner can be better inquired into, and a more satisfactory result attained.

IN SENATE OF THE UNITED STATES, *January 13, 1835.*

Mr. TYLER, from the Committee on Finance, reported the following bill; which was read and passed to a second reading:

A BILL for the relief of Charles J. Catlett.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the proper accounting officers of the Treasury Department be, and they are hereby, authorized and directed to settle and allow, upon just and equitable principles, the claim of Charles J. Catlett for tobacco which belonged to him at Magruder's warehouse, Cedar Point warehouse, and Nottingham warehouse, all in the State of Maryland, and was lost, captured, or destroyed, by the British or American troops, during the last war between the United States and Great Britain; which said allowance shall be carried to the credit of the said Charles J. Catlett on the books of the treasury.

Endorsed: Bill rejected in 1835—January 13, 1835.

IN SENATE OF THE UNITED STATES, *January 27, 1836.*

Mr. WEBSTER, from the Committee on Finance, reported the following bill; which was read and passed to a second reading:

A BILL for the relief of Charles J. Catlett.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the proper accounting officers of the Treasury Department be, and they are hereby, authorized and directed to settle and allow, upon the principles of the acts of Congress of the 9th April, 1816, and 3d March, 1817, the claim of Charles J. Catlett for tobacco which belonged to him at Magruder's warehouse, Cedar Point warehouse, and Nottingham warehouse, all in the State of Maryland, and was lost, captured, or destroyed by the British or American troops, during the last war between the United States and Great Britain; which said allowance shall be carried to the credit of the said Charles J. Catlett on the books of the treasury.

Endorsed: I remember having looked into the testimony accompanying Mr. Catlett's case, and out of which this bill originated, when I was a member of the Senate. The subject was then discussed, in which discussion I bore a part, and my opinion was favorable to the claimant. I refer it now to the decision of the Attorney General, on the questions which may arise out of the testimony.

JOHN TYLER.

JUNE 7, 1841.

Report of the Third Auditor on the claim under the act for the relief of Charles J. Catlett.

TREASURY DEPARTMENT,
Third Auditor's Office, December 30, 1836.

The claim he has preferred is as follows:

To loss of tobacco by British spoliation during the last war, and for which Congress has ordered restitution, viz:

149	hogsheads	at Nottingham.
115	do.	at Magruder's.
4	do.	at Cedar Point.

Total, 268 hogsheads tobacco, at \$96 90 $\frac{2}{3}$ —\$25,970 27.

To interest from 17th November, 1815, at which time, and at the above rate per hogshead, he sold the remnant and refuse of his tobacco to Phineas Janney, of Alexandria.

At the 2d session of the 23d Congress, (January 13, 1835,) a bill for his relief appears to have been reported from the Committee on Finance of the Senate, accompanied by a report, which was ordered to be printed. After mentioning therein that his losses appeared to have

been very severe, by reason of the military operations of the enemy during the late war with Great Britain, and that he had large quantities of flour and tobacco in store at Alexandria, and considerable quantities of tobacco in the Maryland warehouses, situated at various points on the waters making into the Chesapeake bay, all of which were burnt, captured, or destroyed by the enemy, the committee proceeded to observe that, in regard to the chief bulk of his losses, it could perceive no safe principal upon which it could rest in recommending an allowance; that the utmost extent to which the government can with safety go, in remunerating losses to individuals who have been subjected to injury by the fortunes of war, is to protect them *against its own act and its consequences*. Thus, if a house be occupied by the troops of the country for military operations, it thereby is placed on the footing of any other military position, and may be justifiably destroyed by the enemy; so, if private property is used to assist in the defence of the country, or in the prosecution of offensive military operations, it becomes as liable to be destroyed by the enemy as any part of the material of the army; and, if destroyed, the government is fairly answerable for its value. That, keeping this principle in view, the committee could find no sufficient authority to recommend the payment of by far the largest portion of the claim set up by the petitioner, but that there were portions of the claim which the committee consider as falling under the principle thus laid down; that the petitioner had in store at *Magruder's warehouse*, on the Patuxent river, 115 hogsheads of tobacco, which, along with the warehouse, appear to have been burnt by the British in June, 1814; that he had also a small number of hogsheads in store at Cedar Point warehouse, which were destroyed in the same way; that the proof was satisfactory to show that very smart conflicts between detachments of the enemy and Maryland troops occurred at both places; and that at Nottingham warehouse, seven miles distant from Magruder's, where the petitioner had in store 149 hogsheads of tobacco, a breastwork was made of the tobacco, for the defence of the American troops; that, *while at Magruder's* and Cedar Point, the American troops found shelter under the warehouses, and from therein continued to fire on the enemy until their ammunition was expended; *that it was also in proof that other warehouses, equally exposed, were left unburnt, in consequence, as was believed, of the absence of all military operations in their immediate neighborhood by the troops of the United States*; that the destruction of the warehouses at *Magruder's* and Cedar Point, with their contents, and the abduction of the tobacco from Nottingham, *seemed fairly to be traceable to the principle laid down by the committee, and to that extent it reported a bill for his relief*; that the committee had not been able to satisfy themselves as to the proper price which should be allowed for the tobacco thus destroyed and carried off; that, at the time of the destruction, the prices for tobacco were merely nominal, but after the restoration of peace the prices became high; that it was fairly to be inferred that the petitioner would have continued to hold it until the peace—say one year more—he being at the time a merchant of wealth and respectability, and, like others in the country, indulging in speculation in an article which time improved in quality, flavor, and

price; and that, under all the circumstances, it had been deemed most advisable to submit the subject to an equitable decision on the part of the accounting officers, when the intentions of the petitioner could be better inquired into, and a more satisfactory result attained. The bill to which the report refers authorized and directed the proper accounting officers of the Treasury Department to settle *and allow, upon just and equitable principles*, the claim of Charles J. Catlett, for tobacco which belonged to him at Magruder's warehouse, Cedar Point warehouse, and Nottingham warehouse, all in the State of Maryland, and was lost, captured, or destroyed by the British or American troops during the last war between the United States and Great Britain; and prescribed that the allowance should be carried to the credit of said Charles J. Catlett on the books of the treasury.

On the 19th February, 1835, the bill appears to have been rejected; and on the following day a reconsideration of the vote was moved, and the motion laid on the table. No further action on it appears to have been had during the session.

At the last session of Congress another bill for the relief of Charles J. Catlett, in precisely the same form as the one before noticed, was reported from the Committee of Finance of the Senate, unaccompanied by any report in relation to it. This bill appears to have been read a second time, and considered as in Committee of the Whole, on the 29th March, 1836, and to have been then, on motion, ordered to lie on the table, where it rested till the 24th June following, when the consideration of it, as in Committee of the Whole, is shown to have been resumed, and, when it was amended, reported to the Senate, and the amendment concurred in; and in the amended form it afterwards became a law. The amendment consisted in substituting for the words "and allow upon just and equitable principles" these: "*upon the principles of the acts of Congress of the 9th April, 1816, and 3d March, 1817.*" In acting on the claim, therefore, the accounting officers will have to be governed not by the views of the committee on the principles laid down in their report, but by the principles of the acts referred to. So far as respects the first of those acts, the principles in question are contained in the 9th section thereof, and which provided that any person who in the late war between the United States and Great Britain sustained damage by the destruction of his or her house or building by the enemy, while the same was occupied as a military deposit under the authority of an officer or agent of the United States, should be allowed and paid the amount of such damage, provided it should appear that such occupation was the cause of the destruction. And the act of the 3d March, 1817, provided that the aforesaid 9th section should be construed to extend only to houses or other buildings occupied by an order of an officer or agent of the United States, as a place of deposit for military or naval stores, or as barracks for the military forces of the United States.

Part of the testimony adduced in support of the claim consists of two letters, dated 28th August, 1828, and 27th February, 1832, addressed to the claimant by George W. Biscoe, who appears to have been in service as a major of militia of the State of Maryland. The first of these letters is verified on oath, and in it the writer has thus

expressed himself: "At your request for information in relation to the tobacco, your property, taken from the warehouses at Nottingham by the British during the period of their invasion, I have to state that a part of your tobacco was used by my order, as commanding officer at Nottingham, for the purpose of erecting a breastwork for the defence of the place; and, to the exception of three or four hogsheads, I am confident, out of the sale I made to you of 105 hogsheads, that the remainder was carried away by the enemy. I also recollect that Benjamin Oden, esq., remarked that a part of the tobacco thus used was sold by him to you." The other letter contains a statement which the writer represents to be made on honor, as a brigade commander of the militia of Maryland, and as an officer holding a commission of surveyor and inspector of the revenue under the general government, and to be such as he can verify on oath, if necessary. This statement is as follows: "*You request information on the subject of the defence of Magruder's warehouses in June, 1814, by a detachment of militia acting under my orders. In reply, I have to state that the captain in command reported to me his rencounter with the enemy at that place. He stated that, on the near approach of the British barges (said to be) under the command of Commodore Barry and Colonel Malcomb, of marines, he posted his men behind the warehouses, situated within thirty yards of the shore; and that so soon as his fire of musketry could be deemed effectual he commenced, and continued to do so for an hour or two, being under cover of the warehouses; finally his ammunition became expended, and he was compelled to retire. The enemy then landed and set fire to the warehouses, which were burnt.* I am aware that you sustained considerable loss in tobacco there and elsewhere on the Patuxent river, from the circumstances of your having purchased of me more than one hundred hogsheads, which, with the exception of a few (say, to the best of my recollection, four or five) at the warehouses here, were either burnt in Magruder's warehouses at the period above stated, or were carried away by the enemy, on their retreat from the city of Washington to their shipping at this place. At one period I used the tobacco in the warehouses here for military purposes, a part of which I recollect was your property, having sold it to you."

This letter is denoted to have been written at Nottingham. Another portion of the evidence adduced is contained in depositions of Jesse Selby and James Baden, dated 20th December, 1833, and 20th February, 1835, the former of whom has testified that *he was stationed at Magruder's warehouse, on the Patuxent river, in June, 1814, in a company of Maryland militia commanded by Captain Joshua Naylor; and that the said warehouse, he verily believed, was burnt in consequence of the said company being there, and the said warehouse affording protection, and being occupied by them; also, that Captain Naylor died in the year 1825.* And Mr. Baden has testified that General G. W. Biscoe, commanding the Maryland militia on the 17th June, 1814, (then Major Biscoe,) ordered the tobacco to be rolled out of the warehouses in Nottingham, a large breastwork to be made of the tobacco, and the cannon to be planted behind it; that the militia then fired on the British, who manned eleven barges, commanded by Commodore Bar-

ry, who, at the time, retreated; that the British, some time after, took the most of the tobacco from that warehouse, and kept possession of the waters of the Patuxent river as high as Nottingham until they burnt the Capitol; that Captain Naylor's company of Maryland militia were stationed behind Magruder's warehouse, and, as soon as the British barges came within gunshot, commenced firing upon them, and continued until the ammunition was expended; that they then retreated, and the enemy immediately landed, set fire to the warehouse, and burnt all the tobacco within it; that this was on the 17th June, 1814, the day the militia prevented them from coming to Nottingham, which, probably, prevented that warehouse from sharing the same fate; that the witness was inspector at Magruder's warehouse, but commanded a company on that day at Nottingham; that Charles J. Catlett was a large owner of tobacco, and a very heavy sufferer; that the witness was appointed inspector, in January, 1813, at Magruder's warehouse; and that, previous to his appointment, James Naylor was the inspector. In these papers, no testimony can be perceived by the Third Auditor which will serve to bring the claim within the principles of the acts of 1816 and 1817, before noticed. Of the use of the warehouse at Nottingham for any military purpose there is no proof whatever, nor yet of its having ever been destroyed by the enemy; and that the taking of the tobacco therefrom by the enemy was not at the time at which the same was rolled out and used as a breastwork by the American troops, nor till months thereafter, is evident—the latter transaction appearing by Mr. Baden's deposition to have been on the 17th June, 1814, and the former appearing by Major Biscoe's last letter to have been on the retreat of the enemy from the city of Washington; wherefrom, according to historical evidence, they retired on the night of the 25th August, 1814. And had the taking of the tobacco by the enemy been while it was in the use of the American troops, and because thereof, the testimony affords no means of determining the quantity used in the breastwork, nor what portion of that belonged to the claimant.

As to Magruder's warehouse, it is not pretended to have ever been occupied as a place of deposit for military or naval stores, or as barracks for the military forces of the United States, either by or without an order of an officer or agent of the United States; and a like remark is applicable to the warehouse at Cedar Point, the testimony in relation to which is contained in letters of the Hon. B. J. Semmes and the Hon. D. Jenifer to the Committee of Claims, each dated February 27, 1832. The latter gentleman represents that some schooners of the enemy were anchored off the warehouse; that some of the crews landed and were in the act of taking away some of the tobacco, when General Stuart, the commander of the troops in the vicinity, ordered them down, and commenced an attack with artillery upon the enemy at the warehouse; that, after firing several shots from cannon, &c., the warehouse was set fire to by the enemy, and burned to the ground, with all the tobacco then in the house; that, had the attack not been made by the American troops, the house, it is believed, would not have been fired, as above and below, on the Potomac, tobacco warehouses were visited by the enemy, and not de-

stroyed ; and that, being at the time acting as an aid to the general, the writer was present, and saw the attack and burning of the tobacco warehouse. From this testimony of an eyewitness, it is obvious that the destruction of the warehouse was not caused by any occupation of it by the American troops, or even of their having been stationed against it, and using it as a protection, but in consequence of their having been ordered down and attacked the enemy when in possession of it, and in the act of carrying off tobacco therefrom. It shows, too, that the enemy, in taking away tobacco, were not governed by the circumstance of the building in which it was placed having been used, or not, for a military purpose. Had not the claim appeared to the Third Auditor to be such as can in no point be brought within the principles of the acts of 1816 and 1817, he would, as to the quantities of the tobacco taken or destroyed by the enemy, belonging to the claimant, and the rates to be allowed for the same, have required additional testimony, of a kind different from that afforded by the tobacco notes, &c., produced. The present possession of such notes is not considered as any certain evidence that the tobacco they relate to belonged to the claimant when the warehouses therein mentioned were destroyed or ravaged by the enemy, nor, indeed, that the same was then in those warehouses. To prove that the several hogsheads which the notes relate to were then in the warehouses, evidence on oath, drawn from the books of the inspector at each, would have been deemed necessary ; and to prove the fact of their having belonged to the claimant, and the rates which might have been allowable for them, verified extracts from the account books of the claimant, showing the dates of purchase, and the prices paid for them, would have been requisite. It is observed, that, as respects the charge for one hundred and forty-nine hogsheads at Nottingham, the vouchers relating to *fifty-one* consist not of notes for the receipt thereof into the warehouse, but of manifests for the delivery of the same out of it ; and that the vouchers as to *two* of the hogsheads at Magruder's are of the same description. In case the claim had been admissible, on the principles of the acts of 1816 and 1817, the value of the tobacco at the time it was taken or destroyed would, in conformity with the rules which governed in the settlement of claims under those acts, have had to be taken as the guide for fixing the rates of allowance ; and to arrive at such value, the cost prices before the peace, and not the greatly enhanced prices obtainable thereafter, would serve as the most fit criterion. As, however, the claim is considered by the Third Auditor to be in no point allowable by the accounting officers, on the principles of the before mentioned acts of the 9th of April, 1816, and the 3d of March, 1817, according to which they are directed to settle it, he, without asking for any further testimony, refers the case to the Second Comptroller, for his decision thereon.

PETER HAGNER, *Auditor.*

ALBION K. PARRIS, Esq.,
Second Comptroller.

TREASURY DEPARTMENT,
Second Comptroller's Office, January, 1837.

I concur with the Third Auditor in regard to the claim mentioned in the foregoing report.

ALBION K. PARRIS, *Comptroller.*

Endorsed: (Copy.) Decision of the accounting officers, December 30, 1836.

WASHINGTON, *February 27, 1837.*

Mr. C. J. Catlett has spoken to me respecting a bill passed last session for his relief.

I can only say that the committee who reported the bill were satisfied that a case was proved by the evidence which entitled him to compensation; that the bill was intended to be a positive enactment for relief, and not a mere reference to the judgment of the accounting officers; and that, when the bill was amended in the Senate, it was not understood by me, nor do I suppose it was by others of the committee, that the reference to former or other laws was for any other purpose than to regulate the manner of proceeding in fixing on amounts.

It would seem that unless the act be so construed as to have established the existence of a case fit and proper for relief, it was a useless and vain exercise of legislative power.

I do not know how far these suggestions may be fit to influence your consideration of the matter, but have made them at Mr. Catlett's request, and shall be happy if it should be found consistent with the terms of the law to grant him that relief which I know the committee intended.

Your obedient servant,

DANIEL WEBSTER.

Hon. ALBION K. PARRIS.

Endorsed: Copy of letter from the Hon. Daniel Webster to the Second Comptroller, 27th February, 1837.

SEPTEMBER 11, 1841.

SIR: The Attorney General having decided that Mr. Charles J. Catlett is entitled to relief under the act passed for his benefit in the year 1836, and being satisfied that the amount which, in a fair valuation of his property destroyed or taken by the enemy during the late war, would exceed the claim which the United States holds against Mr. Catlett, you will be pleased to return to Mr. Catlett the mortgage or lien which the United States holds against the property of Mr. Catlett in the town of Alexandria.

CHARLES B. PENROSE, Esq.,
Solicitor of the Treasury.

Endorsed: (Copy.) Letter from Richard Smith, esq., to the Solicitor of the Treasury, September 11, 1841.

TREASURY DEPARTMENT,
Register's Office, September 18, 1841.

I hereby certify that there is due from Charles J. Catlett, in relation to protested bills of exchange purchased from him, the sum of five thousand six hundred and thirty-three dollars and ninety-three cents, agreeable to the First Auditor's report No. 58753.

T. L. SMITH, *Register.*

\$5,633 93.]

Endorsed: Certificate of the Register of the Treasury, 18th September, 1841.

TREASURY DEPARTMENT,
Fourth Auditor's Office, September 20, 1841.

I certify that Charles J. Catlett, late contractor, stands charged on the books of this office with a final balance of three thousand two hundred and twenty-eight dollars and six cents.

A. O. DAYTON.

\$3,228 06.]

Endorsed: Certificate of the Fourth Auditor, September, 1841.

Let Mr. Catlett procure a statement of the amount of his debt to the government. Let him have a conjectural statement made of the value of the tobacco—

First, at the war price ;

Second, at the peace price ; and let these be reported to me.

J. TYLER.

Mr. Hagner will make the statement as early as possible.

Endorsed: Instructions of the President of the United States, September, 1841.

TREASURY DEPARTMENT,
Third Auditor's Office, September 20, 1841.

SIR: In obedience to your instructions in the case of Charles J. Catlett, which require the procuring by him of a statement of the

amount of his debt to the government; the making a conjectural statement of the value of the tobacco—

First, at the war price ;

Second, at the peace price ;

and the reporting these to you by this office, I have the honor to report that, by certificates of the Register of the Treasury and Fourth Auditor, Mr. Catlett appears to stand indebted—

On the books of the former in the sum of.....	\$5,633 93
And on the books of the latter in the sum of.....	3,228 06

8,861 99

To show the war price, Mr. Catlett has procured certificates from John Kurtz, esq., and General Walter Smith, the former expressing that, on reference to the books of Bowie & Kurtz, who were large purchasers of Maryland tobacco, he found that the best crops of Patuxent growth were worth about \$50 per hogshead, average; and General Smith declaring that he would rate the best crops of Maryland tobacco, during the late war with Great Britain, at about \$60 per hogshead, adding that the above estimated value of the crops of the best Maryland tobacco is to be understood as including firsts and seconds of the same crops; and that the purchases made by Mr. Catlett on the Patuxent had always been understood by him to be among the best crops in that vicinity.

Relative to the peace price, a sale appears to have been effected by Mr. Catlett, to P. Janney, esq., in November, 1815, of five hogsheads, (two of firsts and three of seconds, and which he represents to have been refuse,) at \$96 90 $\frac{1}{2}$ on an average—the rate charged in the claim heretofore preferred by him, and at which, although urging it to be too low, he is understood to be disposed to have it, for the present purpose, now rated.

Taking the quantity of tobacco, as charged in the claim of Mr. Catlett, at 268 hogsheads, the war price, assuming the average between \$50 and \$60 per hogshead, (the rates specified in the certificates of Mr. Kurtz and General Smith, say \$55,) would amount to \$14,740; and the peace price, at the rate Mr. Catlett heretofore charged, as aforesaid, would amount to \$25,970 27.

As regards the actual quantity of tobacco, the property of Mr. Catlett, taken or destroyed by the enemy in the warehouses, no further evidence, it is observed, has been adduced to remedy the defects pointed out in the latter part of the Third Auditor's report on the case, dated 30th September, 1836, a copy whereof is amongst the papers, and to which I respectfully refer.

Apprehensive that you may not be informed of the facts about to be mentioned, I deem it incumbent on me to add, that in pursuance of a resolution of the Senate, passed on the 29th January, 1839, all the papers in the case, and a copy of the report of the Third Auditor, before mentioned, were transmitted to the Senate, and referred to the Committee of Claims; and that in a few days thereafter, on motion of the chairman of that committee, it was “ordered that the Committee of Claims be dis-

charged from the further consideration of the petition of Charles J. Catlett, and that the petitioner have leave to withdraw his petition and papers.

With the highest respect, your most obedient servant,
J. THOMPSON, *Acting Auditor*.

The PRESIDENT OF THE UNITED STATES.

Endorsed: Report of the acting Third Auditor to the President, September 20, 1841.

SEPTEMBER 21, 1841.

The President has carefully examined the opinion of the Attorney General, the report from the Third Auditor's office, and the leading facts attendant on the destruction of the tobacco, and can see no reason to differ with the Attorney General in the conclusion to which he has come, that Mr. Catlett is fairly entitled to remuneration for the tobacco destroyed, and the only difficulty being to ascertain whether he is entitled to receive the war or peace price; and either the one or the other exceeding the claim of the government against him, I think it proper that he should receive a quietus or discharge from the government for its claims. Such discharge will, therefore, be given, and a credit be allowed to that extent on the books of the Treasury.

JOHN TYLER.

Copied from the original, by J. H. SMITH.

Endorsed: Instructions of the President of the United States, September 21, 1841.

SEPTEMBER 23, 1841.

The President has examined the claim of Charles J. Catlett under the special act passed for his relief, and, believing it to be a meritorious claim, directs the accounting officers to re-examine the case, and, if they cannot admit the claim, to report the case specially to him, with their reasons for their disallowance. It is desirable that their action should be had as soon as practicable.

Endorsed: Additional instructions of the President of the United States, 23d September, 1841.

Additional report of the Third Auditor on the claim of Charles J. Catlett, under the act of Congress for his relief approved 2d July, 1836, made in pursuance of instructions from the President of the United States dated 23d September, 1841, directing the accounting officers to re-examine the case, and, if they cannot admit the claim, to report the case specially to him, with their reasons for their disallowance.

TREASURY DEPARTMENT,

Third Auditor's Office, September 28, 1841.

Reference is made, in the first instance, to the report of the Third Auditor, dated 30th December, 1836, and concurred in by the Second Com-

troller, wherein they have decided that no part of the claim is allowable by them, "upon the principles of the acts of Congress of the 9th April, 1816, and the 3d March, 1817," agreeably to which they were, by the aforesaid acts for Mr. Catlett's relief, directed to settle it, and wherein reasons are assigned for that decision.

Mr. Catlett had, before presenting to the Senate the petition giving rise to the act for his relief, sought (so far as regards his tobacco at Nottingham) redress by petition presented to the House of Representatives; and to the report of the Committee of Claims thereon, concluding with a resolution for its rejection, printed in the 3d volume of Reports of Committees House of Representatives, 1st session, 22d Congress, No. 413, reference is also made. The papers had been referred by the committee to this office, for information; and of the Third Auditor's reply, noticed in the report, a copy is placed herewith. The subsequent petition appears to be much more comprehensive in its scope, and to have been, on its presentation to the Senate, referred to the Committee on Finance, by whom, on the 13th of May, 1834, a report was made, accompanied by a bill, on which there appears to have been no final action at that session. At the succeeding session the committee presented a like report, accompanied by a bill directing the settlement of the claim "upon just and equitable principles," and in this form the bill was rejected.

A reconsideration of the vote was moved, but without any further proceedings at that session of Congress. Another bill in the same form was reported on the 27th January, 1836, and was read a second time, and considered as in Committee of the Whole, on the 29th of March, when it was ordered "that it lie on the table." The consideration of it was resumed on the 24th of June, 1836; and having been then amended by striking out the words "*and allow upon just and equitable principles,*" and substituting the words "*upon the principles of the acts of Congress of the 9th April, 1816, and the 3d March, 1817,*" it became the law enacted for Mr. Catlett's relief. The acts of 1816 and 1817 had to be executed by a commissioner, and who, by the 12th section of the former of those acts was required to establish, under the direction or with the assent of the President of the United States, such rules as are therein pointed out; and for the rules so established, and various others prescribed by the President for the government of the commissioner, and wherein the President's constructions of sundry provisions of the laws appear, reference is made to the 3d volume of State papers, 1st session 16th Congress, No. 41, H. R.

The duties of the commissioner commenced on the 1st July, 1816, and terminated on the 9th April, 1818; soon after which, the business then in his office, and not finally acted on by him, was, with his records and files, transferred by law to this office. On the 1st November, 1816, only four months after the commissioner entered on his office, he was prevented by the President from making any decisions under the 9th section of the law of April, 1816, being the section which made provision for the payment for damages by the destruction of buildings by the enemy while the same were occupied as a military deposit, under the authority of an officer or agent of

the United States; and, thereafter, no award was ever made by the commissioner under that section. At the following session of Congress, the President, in a message thereto, assigned as the reason for his suspending proceedings relative to the claims under the section in question, its "having received a construction giving it a scope of great and uncertain extent." The message and the report of the committee to which it was referred are printed in the 1st volume of State papers, 2d session 14th Congress, and numbered 10 and 11. The committee, in that report, have declared a decided opinion, from a conversation with the commissioner generally upon the provisions of the act, "that it had given, and was still disposed to give, to the law an extension of construction not contemplated by Congress at the time of its passage, and not warranted by its object."

An explanatory report of the commissioner may also be seen in the same volume, numbered 15. As regards claims under the 9th section of the amendatory act of the 3d March, 1817, referred to in the act for Mr. Catlett's relief, limiting the duty of the commissioner to the carefully examining and investigating the same, and reporting the facts in such [each] case to Congress, that such provision might be made for the relief of the respective claimants as should be deemed just and proper. In conformity therewith, reports of the facts in numerous cases under the aforesaid 9th section were, from time to time, reported to Congress by the commissioner, prior to the 9th April, 1818; but no provision for the relief of the claimants was enacted till the 3d of March, 1825, when a law was passed providing that any person having a claim for a building destroyed by the enemy during the late war, under the act of the 9th April, 1816, and the amendatory act of the 3d March, 1817, which had been presented to the commissioner before the 10th April, 1818, and not paid under said acts, nor finally rejected by him, might within nine months thereafter present the same, with the evidence to support it, to the Third Auditor, for examination and adjustment; and directing him, if he should be satisfied that the building or buildings for which damages were claimed "was, at the time of its destruction, occupied by order of any agent or officer of the United States as a place of deposit for military or naval stores, or as barracks for the military forces of the United States," to proceed to assess the damages and certify the amount for payment, in the way therein mentioned. A report of the Third Auditor's proceedings under the law of 1825 was made to the Senate in January, 1827, and forms Senate document No. 36, 2d session 19th Congress. That law authorizing payment for buildings only, no allowance for personal property destroyed therein was made in any case. The claims for personal property so destroyed amounted, as the report shows, to nearly \$300,000, and not a dollar thereof has ever been paid by the United States—all the subsequent applications to Congress for indemnification, as to many of these cases, having failed. For the relief of owners of buildings destroyed by the enemy while occupied as places of deposit for military stores, or as barracks for the troops, by order of officers of the United States, sundry special acts have been since passed, but without authorizing in a single instance, it is believed, any payment for personal property destroyed in or taken away from such buildings.

At the 1st session of the 22d Congress, the Committee on Claims of the House of Representatives appears to have been instructed, by a resolution, to inquire into the expediency of making further provision for extending and the more effectually carrying into effect the provisions of the act of the 9th April, 1816, before mentioned; and on the 16th March, 1832, the committee made a report (printed, and numbered 386) concluding with a resolution, as follows: "*Resolved*, That it is inexpedient to legislate on the matters contained in the resolution."

The committee appended thereto a very elaborate report, made on the 5th April, 1824, by a select committee appointed to inquire what further legislative provisions were fit and necessary to carry into effect the provisions of the aforesaid act of the 3d March, 1817, amendatory of that of the 9th April, 1816. The latter report was accompanied by a bill, and which, by renewal at the succeeding session of Congress, became, it is believed, after modification, the law of the 3d March, 1825, before noticed. This general view of the course pursued in relation to cases arising under the 9th section of the law of the 9th April, 1816, by President Madison and by Congress, has been presented because it is deemed to manifest the design to have been at all times that the aforesaid 9th section should be construed strictly; and a knowledge of this course had due influence in the action of this officer on the claim, in December, 1836; and the course pursued in Congress, with reference to the particular case of Mr. Catlett, has been here again noticed, because it is considered to evince an intention that he should receive no relief, unless he could bring his claim within the principles of the aforesaid laws of 1816 and 1817.

The papers in the case appear to have been recently laid before the late Attorney General, and by whom an opinion has been given, as follows:

"I am satisfied that Mr. Catlett is entitled to relief under the special act passed for his benefit; but I have not as yet been able to bring my mind to a satisfactory conclusion as to the proper measure of compensation to be applied, namely, whether it should be the war price or the peace price that ought to be allowed.

"J. J. CRITTENDEN."

The opinion, it is observed, does not express that Mr. Catlett is entitled to relief under the special act, *upon the principles of the aforesaid laws of 1816 and 1817*; and, verbally, Mr. Catlett has signified that the Attorney General threw those laws entirely out of view, and relied on some other ground.

The special act appears to me to confer no power on the accounting officers to settle the claim upon any other principles than those of the laws of 1816 and 1817, to which it refers; nor do I see it declared in the opinion that the *accounting officers* would be justified in settling the claim upon different principles, under the special act, independent of any other authority.

To show that no allowance can be made on the claim, "*upon the principles of the acts of Congress of the 9th of April, 1816, and 3d of March, 1817*," the claim will be now reviewed, taking the items separately, and the testimony applicable to each; and

1st. As to 149 hogsheads of tobacco at Nottingham. The earliest letter of General Biscoe to the claimant contains as follows :

“At your request for information in relation to the tobacco (your property) taken from the warehouses at Nottingham by the British during the period of their invasion, I have to state that a part of your tobacco was used by my order, as commanding officer at Nottingham, for the purpose of erecting a breastwork for the defence of the place ; and, to the exception of three or four hogsheads, I am confident, out of the sale I made to you of 105 hogsheads, that the remainder was carried away by the enemy. I also recollect that Benjamin Oden, esq., remarked that a part of the tobacco thus used was sold by him to you.”

The second letter from General Biscoe to the claimant purports to be in answer to a request for information as to the defence of *Magruder's* warehouses, in June, 1814, and, after representations relative thereto, proceeds thus :

“I am aware that you sustained considerable loss in tobacco there and *elsewhere* on the Patuxent river, from the circumstance of your having purchased of me more than one hundred hogsheads, which, with the exception of a few (say, to the best of my recollection, four or five) at the warehouses *here*, [the letter is expressed to have been written at *Nottingham*,] were either burned in Magruder's warehouses at the period above stated, or were carried away by the enemy on their retreat from the city of Washington to their shipping at this place. *At one period* I used the tobacco in the *warehouses here* for military purposes, a *part* of which I recollect was your property, having sold it to you.”

And a deposition of James Baden contains as follows :

“General George W. Biscoe, commanding the Maryland militia, on the 17th day of June, 1814, (then Major Biscoe,) ordered the tobacco to be rolled out of the warehouse in Nottingham, Prince George's county, Maryland, and a large breastwork made of the tobacco, the cannon planted behind it ; and then we fired on the British, who manned eleven barges, commanded by Commodore Barry, who at that time retreated. The heads were out of many hogsheads, and the tobacco a good deal torn out. The British, *some time after*, took the most of the tobacco from that warehouse ; and they kept possession of the waters of the Patuxent river, as high as Nottingham, from that time until they burned the Capitol.”

There is no proof, nor is it even alleged, that the *warehouse* at Nottingham was ever occupied for any military purpose whatever, nor yet that it was destroyed by the enemy. It must not only have been occupied, by order of an officer or agent of the United States, as a place of deposit for military or naval stores, or as barracks for the military forces of the United States, but have been destroyed by the enemy while in such occupation, and in consequence thereof, to have brought the tobacco in it within the 9th section of the act of the 9th of April, 1816, even as construed by the commissioner.

The part of the aforesaid deposition of James Baden in which, after mentioning the breastwork, and the cannon planted behind it, he says, “and then we fired on the British, who manned eleven barges,”

&c., is not only unsustained by the testimony of General Biscoe, the commanding officer, but seems to be in conflict with another part of Mr. Baden's own testimony, which, as regards Magruder's warehouse, will be hereafter noticed, and in which he represents that warehouse to have been burned by the enemy, and adds: "this was on the 17th day of June, 1814, as above stated, *which day we prevented them from coming to Nottingham*, which probably prevented that warehouse from sharing the same fate."

Divested of the testimony as to that firing, the case will be devoid of all proof of any conflict at Nottingham, even in June, 1814. It seems obvious from the testimony that the tobacco then rolled out of the warehouse there, and formed into a breastwork, was only temporarily used, and that the enemy did not carry off the tobacco from the warehouse there till they were on their retreat from Washington, after burning the Capitol, in August. Had the tobacco so used been taken or destroyed while in such use, the testimony, as observed in the former report, affords no means for determining the quantity taken for the breastwork, nor how much of what was taken belonged to Mr. Catlett. General Biscoe, in his first letter, alludes to a sale by him of 105 hogsheads to Mr. Catlett; but it appears, by his second letter, that not more than four or five of them were at Nottingham—all the others being represented to have been either burnt in *Magruder's* warehouse, in June, or carried away from some other place or places on the Patuxent by the enemy, on their retreat, in August.

As to 51 of the 149 hogsheads charged as being in the warehouse at Nottingham, the vouchers, as mentioned in the former report, consists not of notes for the receipt thereof into the warehouse, but of manifests for the delivery of the same out of it. These vouchers have now been separated from the others, and will be found to show that 35 of the 51 were delivered in 1812 and 1813, to George Biscoe & Son, and put in their barn; that two others were delivered, in 1813, to George Biscoe, and put in his barn; that four others were delivered, in 1811, 1812, and 1813, to Francis Green, William Morton, and Edward Skinner, and put in George Biscoe's barn; that two others were delivered in March, 1814, to William Sasscer, and put in George Biscoe's barn; that six others were delivered in 1813, to Gerrard Greenfield, and put in the red barn; and that the remaining two were delivered, in 1813, to Walter T. Greenfield, and put in the red store. Any military occupation of these barns and store at any time is not proved or even alleged; nor is there any proof or allegation of the destruction of those buildings by the enemy, or of the carrying off by them of any tobacco therefrom.

2d. As to 115 hogsheads of tobacco at Magruder's.—The statement in relation thereto, in General Biscoe's second letter to the claimant, is as follows: "You request information on the subject of the defence of Magruder's warehouse, in June, 1814, by a detachment of militia acting under my orders. In reply, I have to state that the captain in command reported to me his rencounter with the enemy at that place. He stated that, on the near approach of the British barges (said to be) under the command of Commodore Barney and Colonel Malcomb, of

marines, he posted his men behind the warehouses, situated within thirty yards of the shore ; and that so soon as his fire of musketry could be deemed effectual, he commenced, and continued to do so for an hour or two, being under cover of the warehouses. Finally his ammunition became expended, and he was compelled to retire. The enemy then landed and set fire to the warehouses, which were burnt." The remaining part of the statement has been previously cited.

Jesse Selby, in a deposition dated December 20, 1833, has testified that he was stationed at Magruder's warehouse, on the Patuxent river, in June, 1814, in a company of Maryland militia, commanded by Captain Joshua Naylor ; and that the warehouse, he verily believes, was burnt in consequence of the said company being there, and the said warehouse affording protection, and being occupied by them ; also, that Captain Naylor died in the year 1825. And, in the aforesaid deposition of James Baden, he has testified that Captain Naylor's company of Maryland militia was stationed behind Magruder's warehouse, and as soon as the British barges came within gunshot commenced firing upon them, and continued until the ammunition was expended ; and that they then retreated, and the enemy immediately landed, set fire to the warehouse, and burnt all the tobacco within it ; that this was on the 17th June, 1814, the day the militia prevented them from coming to Nottingham, which probably prevented that warehouse from sharing the same fate ; that the witness was inspector at Magruder's warehouse, but commanded a company on that day at Nottingham ; that Charles J. Catlett was a large owner of tobacco, and a very heavy sufferer ; that the witness was appointed inspector in January, 1813, at Magruder's warehouse, and that previous to his appointment James Naylor was the inspector ; that the warehouse was, at the time of its destruction, or indeed at any time, occupied by order of an officer or agent of the United States, as a place of deposit for military or naval stores, or as barracks for the troops is not pretended ; and without such an occupation thereof, at the time of destruction, the tobacco destroyed in it could not have been paid for under the 9th section of the act of the 9th April, 1816, even as construed by the commissioner. The tobacco could not have been brought within that section without bringing the building also within it, and the non-presentation of a claim for the destruction of the building may be viewed as a strong manifestation that its owners were satisfied that there had been no such military occupation of it as to entitle them to any remuneration for its destruction under the laws of 1816 and 1817.

3d. As to 4 hogshheads of tobacco at Cedar point.—The testimony in relation to the destruction of the warehouse there is contained in letters of the Hon. B. J. Semmes and the Hon. D. Jenifer, and with reference to which it may suffice here merely to recite, from the report of this office, the following observations : " From this testimony of an eye-witness, it is obvious that the destruction of the warehouse was not caused by any occupation of it by the American troops, or even of their having been stationed against it, and using it as a protection, but in consequence of their having been ordered down and attacked the enemy when in possession of it, and in the act of carry-

ing off tobacco therefrom. It shows, too, that the enemy, in taking away tobacco, were not governed by the circumstance of the building in which it was placed having been used, or not, for a military purpose."

Unable to perceive that the accounting officers possess any power, under the special act for Mr. Catlett's relief, to settle his claim upon any other principles than those of the laws of the 9th April, 1816, and 3d March, 1817, therein mentioned; or that upon the principles of those laws, as the same have been at all times construed in acting under them, any portion of the claim can be allowed by the accounting officers, I am constrained by a sense of duty, without making an allowance on it, to again report the case to the Second Comptroller, for his decision thereon.

PETER HAGNER, *Auditor*.

ALBION K. PARRIS, Esq.,
Second Comptroller.

I am satisfied that Mr. Catlett is entitled to relief, under the special act passed for his benefit, but I have not as yet been able to bring my mind to a satisfactory conclusion as to the proper measure of compensation to be applied—namely, whether it should be the war price or the peace price that ought to be allowed him.

J. J. CRITTENDEN.

Endorsed: Papers of Charles J. Catlett.

WASHINGTON, *September 28, 1841.*

DEAR SIR: In giving your opinion on the case of Mr. Catlett, referred to you by the President of the United States on the 7th June last, did you not have reference to the acts of 1816 and 1817; and did you not, after examining Mr. Hagner's report of the 30th December, 1836, and the other papers referred to you, come to the opinion that Mr. Catlett was entitled to relief under the special act, upon the principles of the laws of 1816 and 1817, therein referred to?

I am, sir, very respectfully, your obedient servant,

RICHARD SMITH.

Hon. J. J. CRITTENDEN,
Late Attorney General.

SEPTEMBER 28, 1841.

In the very brief opinion expressed in an endorsement on the papers of Mr. Catlett, I certainly had reference to the special act passed for his relief, and to the several acts that were therein referred to, as furnishing the rule or principle for the decision of his case. I supposed, of course, that I understood the case, and had made all neces-

sary examination of it, before I attempted to give any opinion about it. Mr. Hagner's report was before me, but, imagining myself capable of forming an opinion on the case for myself, I do not know that I examined that report very thoroughly, or even that I read it entirely through. This, I presume, will be a sufficient answer to the inquiries on the preceding page.

J. J. CRITTENDEN.

TREASURY DEPARTMENT,
Second Comptroller's Office, September 29, 1841.

SIR: The Attorney General having, by direction of the President of the United States, examined the claim of Charles J. Catlett, under the act for his relief passed July 2, 1836, and having given an opinion that said Catlett is entitled to relief under that act; and having also certified that, in examining the case, and giving an opinion, he had reference to the acts of 1816 and 1817, as furnishing the rate or principle for the decision of the case, I think an account should be reported, agreeably to the opinion of the Attorney General, and the papers are accordingly referred back to you, that an account may be reported accordingly.

Respectfully, &c.,

ALBION K. PARRIS, *Comptroller.*

PETER HAGNER, Esq., *Third Auditor.*

The United States to Charles J. Catlett.

DR.

For this sum allowed under a special act of Congress for his relief, approved July 2, 1836, in pursuance of an opinion of the late Attorney General, and a decision of the Second Comptroller founded thereon, for tobacco taken or destroyed by the British during the late war with Great Britain, at Magruder's warehouse, Cedar Point warehouse, and Nottingham warehouse, all in the State of Maryland..... \$8,861 99

TREASURY DEPARTMENT,
Third Auditor's Office, September 29, 1841.

Stated by

T. GUNTON.

TREASURY DEPARTMENT,
Second Comptroller's Office, September 29, 1841.

Examined by

J. SEAVER.

Endorsed: No. 13280. Account of Charles J. Catlett. Act for his relief, \$8,861 99. Reported September 29, 1841. Requisition No. 9158, dated September 29, 1841, for five thousand six hundred and thirty-three dollars and ninety-three cents, to be carried to his

credit on the books of the Register of the Treasury, (\$5,633 93;) requisition No. 9159, dated 29th September, 1841, for three thousand two hundred and twenty-eight dollars and six cents, to be carried to his credit on the books of the Fourth Auditor, (\$3,228 06.)

[No. 13280.]

TREASURY DEPARTMENT,
Third Auditor's Office, September 29, 1841.

I certify that there is due from the United States to Charles J. Catlett, under a special act of Congress for his relief, approved 2d July, 1836, and in pursuance of an opinion of the late Attorney General, and a decision of the Second Comptroller founded thereon, the sum of eight thousand eight hundred and sixty-one dollars and ninety-nine cents, for tobacco taken or destroyed by the British during the late war with Great Britain, at Magruder's warehouse, Cedar Point warehouse, and Nottingham warehouse, all in the State of Maryland, and for which amount two requisitions will issue in favor of the Treasurer of the United States, one for the sum of five thousand six hundred and thirty-three dollars and ninety-three cents, to be carried to the credit of the said Charles J. Catlett on the books of the Register of the Treasury; and the other for three thousand two hundred and twenty-eight dollars and six cents, to be carried to his credit on the books of the Fourth Auditor, as appears from the statement and vouchers, herewith transmitted, for the decision of the Second Comptroller of the Treasury thereon.

PETER HAGNER, *Auditor.*

ALBION K. PARRIS, Esq.,
Second Comptroller of the Treasury.

SECOND COMPTROLLER'S OFFICE.

I admit and certify the above balance, this 29th day of September, 1841.

ALBION K. PARRIS,
Second Comptroller.

Endorsed: No. 13280. Charles J. Catlett.

Papers of Mr. Catlett left with Attorney General, June 7, 1841.

Copy of law of Congress for his relief, with an endorsement thereon by the President, referring the case to him.

Copy of Mr. Webster's letter to Judge Parris, 27th February, 1837.

Mr. Catlett's account \$25,970 27, with interest from 17th November, 1815.

Bill of P. Janney to Mr. Catlett, showing the price of the tobacco in 1815.

Report of the committee which reported the bill.

Mr. Hagner's report.

Governor Kent's letter, marked A.

Mr. Catlett's petition.

James Baden's affidavit.

S. C. Moran's certificate.

B. J. Semmes' letter.

D. Jenifer's letter.

George Biscoe's letter.

George Biscoe's letter.

George Calvert's.

Jesse Selby's deposition.

Certificates for 149 hogsheads at Nottingham.

Certificates for 115 hogsheads at Magruder's.

Endorsed: List of papers laid before the Attorney General, 1841.

"An act to authorize the payment for property lost, captured, or destroyed by the enemy, while in the military service of the United States, and for other purposes," approved April 9, 1816; and the act to amend the same, approved March 3, 1817.

The original act, by the 1st and 2d sections, provides compensation for "horses" killed in battle, or dying of wounds received in battle, or for want of forage, &c.; or "in consequence" of the owner being "dismounted or separated and detached from the same," &c.

By the 3d section, compensation is provided for damage "by the loss, capture, or destruction, by an enemy, of any horse, mule, ox, wagon, cart, boat, sleigh, or harness, while such property was in the military service of the United States," &c.

By the 5th section, "for property that has been impressed or taken by public authority for the use or subsistence of the army, &c., and the same shall have been destroyed, lost, or consumed."

By the 9th section, for damage by the destruction of private "houses or buildings by the enemy, while the same were occupied as a military deposit, under the authority of an officer or agent of the United States," &c.; "provided it shall appear that such occupation was the cause of the destruction."

In the amendatory act of the 3d of March, 1817, it is declared that the original act shall "extend only to houses or other buildings occupied by an order of an officer or agent of the United States, as a place of deposit for military or naval stores, or as barracks for the military forces of the United States," &c.

The 3d section provides compensation for any person "who has sustained damage by the loss of any horse, mule, ox, wagon, cart, boat, sleigh, or harness, while such property was in the military service of the United States, either by impressment or contract," &c.

Endorsed: Abstract of the laws of the 9th April, 1816, and 3d March, 1817.

IN THE SENATE OF THE UNITED STATES, *April 18, 1856.*

Mr. WADE made the following report, (to accompany bill S. 255.)

The Committee of Claims, to whom was referred the petition of the administrator of Rinaldo Johnson and of Ann E. Johnson, have had the same under consideration, and now report:

The petition seeks to obtain indemnity for a quantity of tobacco said to have been taken and destroyed by the British during their invasion of Maryland in the year 1814. The facts and principles involved in the several cases being identical, it was deemed proper to consider them together. These and similar claims have been frequently urged upon the attention of Congress, and numerous reports have been made, in both Houses, in which the principles, both of law and equity, involved in them, have been elaborately discussed.

During the last Congress, a bill was reported and passed the Senate for the payment of the claims of these petitioners. The report accompanying the bill contains the following statement of the case, which is adopted as a part of this report :

Commodore Barney, in 1814, commanded the United States flotilla designed by the American government to protect the Chesapeake bay and its tributaries from the naval force of the enemy ; that to prevent the capture of the vessels under his command, he was compelled to abandon the Chesapeake, and was induced to sail up the Patuxent river, one of its tributaries, with the hope that the British would be unable, or at least unwilling, to follow with their larger vessels. This expectation of the commodore was not realized ; he was pursued by the enemy, and was ultimately compelled to blow up his vessels to prevent their capture.

It is well known to the Senate, that from this period the Patuxent river was permanently occupied by the naval forces of the enemy, and became the point from which various military expeditions were ordered against the surrounding country, terminating with the capture of Washington, and the burning of the Capitol. General Winder was placed in command of this military division ; the militia was called out to resist the landing of the British forces, and for a considerable period were successful in several instances in preventing the landing, and in all instances in driving the enemy back to their vessels.

It appears, from the evidence, that two public warehouses had been erected, many years before this period, upon the margin of the Patuxent, for the inspection and deposit of the tobacco grown by the citizens of Prince George's county—one at the village of Nottingham, the other at Magruder's Ferry ; that these houses were in 1814 filled with hogsheads of tobacco, the property of the planters of that county, or of merchants who had purchased it for shipment ; and that the tobacco for which remuneration is now claimed by the petitioner, R. Johnson, had been deposited in the warehouse at Magruder's Ferry. The evidence conclusively establishes the fact that the warehouse at Magruder's Ferry was burned by the British, with all the tobacco it contained.

In investigating the right of the petitioners to indemnity from the federal government, your committee at once perceive that the petitioners could never have claimed indemnity under the general laws of 1816 and 1817, because the relief designed to be afforded by those acts *expressly and exclusively* applied to injuries to *real property*. The act of 1816 provides "that any person who, in the time aforesaid, has sustained damages by the destruction of his or her *house or building* by the enemy, while the same was occupied as a military deposit under the authority of an officer or agent of the United States, shall be allowed and paid the amount of such damage, provided it shall appear that such occupation was the cause of its destruction."

Your committee have been unable to recognize the force or propriety of the distinction which makes the United States liable for *real property* destroyed by the enemy, and which exempts the government from liability for *personal property* destroyed under the same circumstances; they are unable to appreciate the justice of a rule which makes the government liable for a house burned by the enemy, and exempts it from liability for the personal property burned in the house.

Your committee are of opinion that the United States should be held liable to reimburse her citizens, whenever private property has been (in accordance with the usages of civilized warfare) destroyed by a public enemy *because of its use* for military purposes by the authority of an officer or agent of the government.

Your committee believe that the facts, to which they will now very briefly advert, fully establish the right of the petitioners to relief, under the principles here laid down:

First. In reference to the warehouse at Magruder's Ferry, it appears that a considerable American force was stationed behind this warehouse, which, being filled with tobacco, afforded complete protection against the cannon of the enemy, and that a battle was fought with the British vessels, which continued until the ammunition of our troops was exhausted, and they were consequently obliged to retreat. It is clearly proven that upon the retreat of the American force, the British landed and burned the warehouse, with the tobacco of the petitioner, R. Johnson, and others therein contained.

Your committee further report that no possible doubt can exist as to the quantity of the tobacco which belonged to the petitioners, because it is evidenced by tobacco notes now in their possession, or deposited in the State Department, which designate each hogshead and the net weight of its contents. There are many precedents, to which your committee do not deem it necessary to refer, where the government have paid for *personal property* destroyed under similar circumstances. The value of the tobacco is also established by satisfactory proof, but the committee have deemed it better, in the bill which they have prepared for the relief of the petitioners, to provide that the proper accounting officers of the treasury shall ascertain, from such proof as may be laid before them, the quantity and value of the tobacco destroyed, and shall pay the value so to be ascertained.

There being no distinction in principle in the right of the petitioner to relief, the committee have reported a bill for his relief, which they confidently recommend to the favorable consideration of the Senate.

To the honorable the Senate and the House of Representatives in Congress assembled:

The memorial of Thomas Rinaldo Johnson, administrator of Rinaldo Johnson, and Sarah A. Nuttrill, administratrix of Ann E. Johnson, respectfully sheweth—

That those they represent were proprietors of upwards of one hundred hogsheds of tobacco, which were stored in the Maryland inspection warehouse at Magruder's, in the said State, in the year 1814; that at the time said tobacco was stored there, in June, 1814, or thereabouts, the British troops, or sailors, on a predatory excursion, were fired upon by the American troops stationed in and about said Magruder's warehouse; that after the ammunition of the American forces was exhausted, they retreated, and the British forces immediately after landed, and burned said warehouse and its contents, including the tobacco belonging to your memorialists, or rather to the estates they represent.

Your memorialists refer, for proof of their claim, to the annexed affidavits and reports of committees of Congress, by which it will be shown the quantity of tobacco belonging to them, which was stored in said warehouse at the time of its destruction; and also that the burning of the same was in consequence of its occupation by the American troops.

Your memorialists therefore pray that they may be compensated for the loss they have thus sustained, as others have, under similar circumstances, been compensated, and they will ever pray, &c.

Respectfully submitted.

THOMAS RINALDO JOHNSON,
Administrator of Rinaldo Johnson, for himself, and for
Mrs. Ann Nuttril, administratrix of Ann E. Johnson.

DECEMBER, 1849.

WASHINGTON, June 15, 1850.

DEAR SIR: In reply to your letter of the 20th of June, 1850, asking me for any information it may be in my power to give in relation to the burning of the warehouses known as Magruder's, on the Patuxent river, with the tobacco contained therein, by the enemy's forces in the war of 1812, I have to state that a company of militia, acting under my orders as *Major* of the 17th regiment, were posted at Magruder's warehouse for its defence, and when the British barges ascended the river on or about the 17th of June, 1814, so soon as they were deemed by Captain Joshua Nailor, (the captain in command) to be in reach of his fire, he commenced firing upon them from behind the said warehouses and continued to do so until his ammunition was expended; the enemy immediately landed and the militia retreated. The enemy then burned the warehouses with all the tobacco contained therein. I was at the village of Nottingham on or about the 17th of June, 1814, (my place of residence,) distance eight miles higher up

the river, and discovered Magruder's warehouses burning. I was well acquainted with Mr. Rinaldo Johnson, and his wife, Mrs. Ann E. Johnson, and always understood they had a large quantity of tobacco in said warehouses at the time of their destruction by the British troops. In reply to your other inquiries, I have to remark, that the burning of the warehouses aforesaid was prior to the advance of the British troops to the city of Washington, it being in the month of August, 1814, that they advanced to Washington.

GEORGE W. BISCOE,
Late Brigadier General Maryland Militia.

Subscribed and sworn to at Washington city, this 24th day of June, 1850, before

JAMES CALLAGHAN, *J. P.*

WASHINGTON COUNTY, }
District of Columbia, } *to wit:*

On this 20th day of December, 1833, personally appears before me, the subscriber, a justice of the peace in and for said county, Jesse Selby, and makes oath on the Holy Evangely of Almighty God, that he was stationed at Magruder's warehouse, on the Patuxent river, in June, 1814, in a company of Maryland militia, commanded by Captain Joshua Naylor, and that the said warehouse, he verily believes, was burned in consequence of the said company being there, and the said warehouse affording protection and being occupied by them. This deponent further states that Captain Naylor died in the year 1825.

Sworn before

HENRY WIRTZ, *J. P.*

TREASURY DEPARTMENT,
Third Auditor's Office, November 30, 1850.

The foregoing is a true copy of the original on file in this office.

JNO. S. GALLAHER, *Auditor.*

WASHINGTON COUNTY, DISTRICT OF COLUMBIA,
December 20, 1850.

On this day personally appeared before me Hon. Wm. D. Merrick, of the State of Maryland, and made oath on the Holy Evangelists of Almighty God, that he has long known, personally, James Baden, of Prince George's county, Maryland, and that said Baden is a man of respectability, and every way worthy of credit. Deponent further states, that it is within his personal knowledge that a considerable

body of United States troops were stationed at Benedict, in June, 1814. He was himself there, for a time, in that month and year, with a detachment of four or five hundred infantry, consisting of parts of the 36th and 38th regiments, of one of which regiments, the 36th, he was, at that time, the adjutant; these troops and others were, at various times, from early in the spring of the year 1814 up to a few days before the landing of the British army at Benedict, stationed at various places on the course of the Patuxent river, sometimes in a body and sometimes in different detachments.

Sworn before me,

B. K. MORSELL, *Justice of the Peace.*